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SUPERFUND OVERSIGHT

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

TO RECEIVE TESTIMONY FROM RITA M. LAVELLE

FEBRUARY 23, 1983

PART 1

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CONTENTS

OPENING STATEMENTS

Page

Baucus, Hon. Max, U.S. Senator from the State of Montana 6
Chafee, Hon. John H., U.S. Senator from the State of Rhode Island 4
Mitchell, Hon. George J., U.S. Senator from the State of Maine 5
Moynihan, Hon. Daniel Patrick, U.S. Senator from the State of New York 5
Randolph, Hon. Jennings, U.S. Senator from the State of West Virginia 2
Stafford, Hon. Robert T., U.S. Senator from the State of Vermont 1

WITNESS

Lavelle, Rita M., Former Assistant Administrator for Solid Waste and Emergency Response, Environmental Protection Agency 7

ADDITIONAL MATERIAL

Letters from the Administrator, EPA to the Justice Department 72-92
Memorandum dated October 7, 1981, from Office of Legal Counsel and Enforcement, EPA 50
Moynihan, Hon. Daniel Patrick, written questions submitted to Ms. Lavelle 38
Transcript of a meeting at EPA on degree of hazard grant proposal, April 8, 1982 93

SUPERFUND OVERSIGHT

WEDNESDAY, FEBRUARY 23, 1983

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C.

The committee met at 10 a.m., in room SD-406, Dirksen Senate Office Building, Hon. Robert T. Stafford (chairman of the committee) presiding.

Present: Senators Stafford, Domenici, Chafee, Abdnor, Symms, Randolph, Hart, Moynihan, Mitchell, Baucus, and Humphrey.

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. The Committee on Environment and Public Works will please come to order.

We regret that we were unable to get a larger hearing room for this morning's hearing.

We realize this will be somewhat uncomfortable but we trust all our guests will be as quiet as possible, so that the committee can proceed without interruption.

This morning the committee will hear from only one witness, but I expect this session nonetheless will be a full one.

Permit me at the outset to make a few observations. I speak first as the chairman of the committee, which is responsible for overseeing the conduct of the Environment Protection Agency.

I speak, second, as a member of the committee who helped write the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Superfund law, and the many other public health and pollution control laws which this Congress has enacted.

I speak, third, as a Senator from Vermont, a State whose environment is precious to me and our people.

Finally, I speak as one man who believes deeply that America has a heritage which we are morally obliged to pass on to the generations which follow us. America is not a resource to be consumed, much less squandered. Nor is it a fungible good to be converted to the profits of corporate shareholders.

It is a precious and fragile thing which makes Americans vastly more fortunate than those who live elsewhere in the world.

The reason for today's hearing is not, in the view of this Senator, just to indulge in squalid tales of shredders and missing computer disks. Those matters are important, but principally only insofar as they relate to the mission of the Environmental Protection Agency, which is to protect America and her people.

I am concerned, not just with whether or why the Superfund program may have been mismanaged, but whether or why other programs—those that protect air and water and human health, may also be afflicted.

One purpose of this hearing is to give Ms. Lavelle her day in court. Serious charges have been leveled against her by her former colleagues and coworkers. She deserves the opportunity to respond.

But the second, and more important purpose, is to examine the inner workings of the Environmental Protection Agency to determine how policy decisions are made and implemented.

Ms. Lavelle requested this opportunity, just as she voluntarily surrendered her calendar to the committee. Her reasons, or more accurately, the reasons of her lawyers, for choosing to surrender themselves and their documents to this committee rather than one of the other committees conducting inquiries are their own. They have said they believe Ms. Lavelle will receive fair treatment from this committee and its members. And she shall.

But the interests of the public will also be treated fairly.

I, for one, intend to ask some questions which those inside and outside this room may find uncomfortable. Indeed, I myself will find asking them uncomfortable. I am not by nature an inquisitor. Nevertheless, they are serious questions to which the American public deserves honest answers.

What further action this committee will take I cannot now say. It seems likely to me that some further hearings will be scheduled. But that will be determined by this morning's session. So, without further ado, we should proceed.

Senator Randolph, do you have an opening statement?

OPENING STATEMENT OF HON. JENNINGS RANDOLPH, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator **Randolph**. Yes, and this will not be a brief statement.

Mr. Chairman, I commend you for the prompt scheduling of this hearing in which our witness will be Ms. Lavelle. We are attempting to resolve, in a reasonable and fair manner, those issues surrounding the Environmental Protection Agency. We want nothing to impair the ability of this agency to operate effectively in the best interest of the American people.

Over the weekend, it was my privilege to confer with Senator Chafee and we talked about the subject matter of this hearing.

I fully believe all the members of this committee will try, as best they can, to come to a realization that, without delay, we must move on this matter.

Ms. Lavelle, I appreciate that you have made yourself available to our committee, and I repeat that we have developed, within this panel, the laws that you have been charged with to administer at EPA.

Your appearance is voluntary, is that correct?

Ms. **Lavelle**. Yes, sir.

Senator **Randolph**. I hope that you will be very candid with us, and I have every reason to believe that you will be as we attempt to determine some of the correct and valid answers to many of the questions which have arisen.

We, of course, for approximately 2 years, have kept very close to the operation of EPA.

The Committee on Environment and Public Works has a jurisdiction that is very important in the Senate. It has the jurisdiction over virtually all the activities of the Environmental Protection Agency.

We, as I said, originated the Solid Waste Disposal Act and the Superfund Act, and these are your responsibilities to us, directly, and to the Congress and the American people.

In this committee, we developed many other environmental statutes, the Clean Air Act, the Clean Water Act for example, and our intense interest is of long standing, not just as members of our two major parties, but members of this committee.

We continue to be concerned, some in varying degrees, that these laws be carried out in the interest of the American people.

We have been expressing substantial concern about the operation of EPA for some time. Back in October of 1981, the Administrator of EPA appeared before us, and Mrs. Burford gave us a review of the agency activities, the proposed budget cuts, and frankly, we felt that many of those cuts impaired the ability of EPA to carry out its legal mandate.

There were other hearings, much correspondence, and we had attempted to inform the Agency, through the proper channels, of our priorities for environmental protection.

Just last week the Administrator came before us, and there was a review of the budget proposals. We discussed the current controversy because it was part and parcel of the EPA Budget at the present time.

And so, Mr. Chairman, and members of the committee, we are historically in this committee bipartisan. I stress that because it is true. The Environmental Protection Agency was created by an Executive order, we must remember, of a Republican President, under administrations of both parties. There has been, we hope, a cooperative relationship with the Congress that has focused time and again on the task to be accomplished rather than narrow partisan differences.

Recent events at EPA and its activities are, I think, disturbing. We constantly read and hear stories of disarray in the Agency.

There are personal differences, competitions that threaten to bring the effectiveness of EPA to a standstill and we don't want that. It is not my purpose, and certainly not the purpose of the members here, to inject ourselves into these disputes. The circumstances of Ms. Lavelle's dismissal from EPA have received attention. They are important to us to the extent they indicate the general pattern of operation within the Agency.

I think that many members of this committee share my belief that we have a principal concern to monitor how the Agency is implementing the programs that come to it which are intended to protect the health and the well-being of the American people.

We are concerned with an obvious erosion of the credibility of the Agency at the present time.

There are many who believe that whatever action is taken by EPA now should be viewed with suspicion. I don't think that is good.

Public opinion surveys confirm that citizens support strong environmental statutes and also a vigorous and a fair enforcement, as our chairman said in his statement. These programs cannot be carried out by an agency, whatever the agency may be, where key officials seemingly must be defending themselves and justifying their actions. That, of course, seems to be a reality in this case. While events of recent weeks suggest that all is not well within EPA, our primary purpose today must be to review these programs for which you, Ms. Lavelle, are responsible.

How have you implemented the program? What has been your general attitude, and the attitude of the Agency in encouraging or impeding your ability to act?

All of us believe, and we acknowledge the right of a President, any President, to form an administration composed of those with compatible views. We cannot, however, tolerate, within an agency the paralyzation of that agency because of internal turmoil.

Ms. Lavelle, this is not the first time during my 38 years in the Congress that matters of this kind have come before me on committees in which I served in the House and the Senate. But, there are circumstances that sometimes make us believe that there is certain intervention that takes place. The law is the law, and it must be administered fairly.

I close by saying that I know all members of this committee will want to gather information that we have reason to believe is correct. We want to continue hearings, Mr. Chairman, if that is the desire, before making those final judgments on implementation of especially the Superfund program, and we are hopeful that in this process, Ms. Lavelle, your appearance today and on other occasions, may help us.

Thank you.

Senator **Stafford**. Thank you.

Senator Chafee, do you have an opening statement?

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator **Chafee**. I do, Mr. Chairman.

First, Ms. Lavelle, I welcome you here. As the chairman and Senator Randolph both stated, we are focusing on the Superfund because of the pride we take there, it having been authored in this room. Each of us in this committee, as we have told you many times before in our meetings, deeply care about the environment and the laws which protect us and indeed, that is the reason we serve on this committee, it is an environment committee. We are concerned about the Agency and the charges of mismanagement, and certainly the apparent turmoil within the Agency, which we pointed out when Mrs. Burford was before us the other day.

I want to emphasize that this is an oversight hearing on the Superfund that we are conducting today. It is, not an investigation as some reports have indicated.

Our mission is to review the performance of EPA and implementing that law and other laws as well, as the chairman indicated.

Issues dealing with shredders and contempt citations are being dealt with elsewhere and I, for one, am not interested in that.

We seek today information as to what has to be done to cause the Environment Protection Agency to perform at its highest possible effectiveness. We believe your experience in the Agency is crucial to our oversight efforts, both on Superfund and the management within the Agency itself, so we look forward to your testimony.

Thank you.

Senator STAFFORD. Thank you.

Senator MOYNIHAN.

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator MOYNIHAN. Thank you, Mr. Chairman.

I have two brief remarks.

Welcome to the committee, Ms. Lavelle.

It is the case, as Senator Chafee has said, the Environmental Protection Agency is in a state of apparent turmoil, and this raises the question of the basic organizational arrangement we have put in place for the execution of our environmental legislation.

The EPA was established by an Executive order in 1970. It has, as such, no legislative basis. And Mr. Chairman, it occurs to me, and I would hope we can use these oversight hearings as an occasion to raise with ourselves the question: Do we want to establish a legislative basis for the EPA? Do we want possibly to create a five-person bipartisan commission, as we have done with nuclear matters, to oversee the administration of our environmental laws and to help avoid what appears to have occurred in the last 2 years, which is the politicization of the Agency?

The Agency was established by a Republican President, continued by a Republican President, then a Democratic President; while it remained bipartisan it worked well.

I hope we might have that in our mind, and I would certainly welcome any thoughts Ms. Lavelle might have on the same subject.

Thank you.

Senator STAFFORD. Thank you.

Senator Mitchell.

OPENING STATEMENT OF HON. GEORGE J. MITCHELL, U.S. SENATOR FROM THE STATE OF MAINE

Senator MITCHELL. Thank you, Mr. Chairman.

As you know, Mr. Chairman, last week I wrote you suggesting that this committee conduct a full and fair investigation of the many allegations made recently regarding activities at the Environmental Protection Agency.

I emphasize full because it is in the public interest that any such inquiry be thorough. I emphasize fair because it is in the public interest and the interest of the individuals involved that any such inquiry be fair.

It is obvious that Ms. Lavelle feels she will receive a fair hearing because she appears here voluntarily at her request, even though she has not yet appeared before other committees of Congress where her presence has been sought by subpena.

I welcome this opportunity to appear, and I join the other committee members in welcoming you here today, Ms. Lavelle, but I hope this day is not intended as a substitute for the more thorough and searching inquiry that I suggested.

Since Ms. Lavelle's appearance is at her request, occurs with only 3 days' notice to committee members, and before any member, to my knowledge, has had any opportunity to review the documents relevant to her testimony, without that opportunity we may be unable to inquire with the kind of knowledge or detail that is required in the circumstances. I hope that Ms. Lavelle will indicate early in her testimony that she is first willing to remain today until all questions have been asked by all members of the committee, and second, that she will appear at a later time to be set by the committee, should such an inquiry be decided upon by the committee after the members have had an opportunity to review the many documents that may bear on the testimony here today.

I emphasize again my belief that such an investigation is warranted, given the responsibility of this committee and the charges that have been made, and the necessity, again, not only from the standpoint of the public interest, but from the interest of people like Ms. Lavelle who have been subjected to a great many charges and should have the opportunity to express themselves and defend the positions that they have taken.

Thank you.

Senator STAFFORD. Thank you.

Senator Baucus.

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. Thank you, Mr. Chairman.

Ms. Lavelle, I join my colleagues in thanking you for appearing before us today.

Many questions will be asked concerning present and past EPA activities delving into the allegations and the potential problems that are in the air around EPA.

I, too, will be interested in those matters, but I have another focus, and that is where do we go from here? How do we restore the image and trust in EPA? What recommendations do you have? Do they go to budget restorations? Do they go to management changes? What about the independent commission concept that the Senator from New York alluded to? What action do you candidly believe should be taken either by this committee, by the Congress, by EPA, by the President, to help restore the confidence and trust in EPA that most of us have felt we had, but we feel we are losing very quickly?

Those are the kinds of questions I am interested in, and I hope you address those statements, so we can discuss that later on.

Mr. Chairman, I have a prepared statement that I would like to place in the record.

Senator STAFFORD. Without objection, so ordered.

Opening Statement of Senator Max Baucus

Mr. Chairman, I find no joy in participating in today's hearing to take the testimony of former EPA Assistant Administrator Rita Lavelle. Her story is the tale of an agency in shambles.

The testimony of Jonathan Lash at last week's EPA budget hearing before this committee captures my feelings of regret over these developments. He said:

> "We are unable to recall a single instance in which a top-level official at the Environmental Protection Agency was fired, forced to resign, tainted with scandal, or forced to withdraw before his nomination was confirmed during the first ten years of the Agency's existence. Since Mrs. Gorsuch came to office, there have been six. * * * An agency whose reputation for integrity was impeccable has been sullied."

In this context, two points deserve attention. First, this is not some sort of partisan vendetta we are pursuing. EPA was born of a Republican Administration. During its first decade of existence, it was managed by three Administrators, two Republicans and one Democrat, who directed the Agency on as non-partisan, nonpolitical a course as possible.

Today, that course has been turned around 180 degrees. Instead of cooperation between EPA and Congress, we have contempt citations. Instead of talk of scrubber technology, we are confronted with shredders. Instead of public health priority, we hear rumors of "election tracks" for toxic waste clean-up.

My second point follows closely on this turn of events.

I am not particularly interested in joining a wolf pack in pursuit of EPA. Nor do I think any of the members of this Committee relish such a prospect.

I am interested in clearing the air of charges of mismanagement, political manipulation of Superfund, conflicts of interest and failure to enforce the law. Only by resolving these questions can we take EPA off the front page and put it back to work at Times Beach, Stringfellow, Tar Creek and dozens of other sites around the country where the health of Americans is in jeopardy.

When Ms. Lavelle appeared before this Committee only a year ago for her confirmation hearings, she said:

> "It is my conviction that effective protection of human health and safety, as well as protection of the environmental heritage we all hold so dear, is a critical activity for our Nation."

To the extent that her testimony today can bring about that activity, I welcome it.

Senator **Stafford**. Thank you very much, Senator Baucus.

Ms. Lavelle, before you begin your statement, in view of the seriousness of this occasion, the various allegations that have been made in many quarters and the turbulence involved, I would ask you to take an oath with respect to your testimony, if you would.

Please rise and join me.

Raise your right hand, please.

Do you swear that the testimony that you will give to this committee is the truth, the whole truth, and nothing but the truth, so help you God?

Ms. **Lavelle**. I do.

STATEMENT OF RITA M. LAVELLE, FORMER ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY

Ms. **Lavelle**. Thank you very much, Mr. Chairman, Senators, members of this distinguished committee, it is a pleasure to be here this morning. I want to commit to you that I certainly will remain to answer any and all questions that you have. I will appear as necessary. Obviously, I have to try and find employment, so if we could schedule a little ahead it would help me personally.

Also for the record I will say I was not served a subpena until this morning, I will be appearing tomorrow and have been working with the House so as to appear when they deem it appropriate to appear and will stand by that commitment.

The Environmental Protection Agency is engulfed in an escalating crisis of name calling, rumor, criticism, charges, and countercharges. The impact of this hasty and disorganized attack on the Agency has been to weaken or destroy much of the significant and effective work accomplished in our national effort to clean up the environment and make the United States a clean, safe place to live and work.

The time has come for a calm and collective approach to prevail. It is imperative that all of us begin to work together again to recapture and maintain our bipartisan environmental consensus.

The Senate Committee on Environment and Public Works has a long and impressive record of bipartisan accomplishment in the initiation and implementation of environmental programs and policies. Today your committee has undertaken to examine the implementation and management of some of those programs and policies. I welcome the Senate's leadership in this inquiry. I appreciate the opportunity to testify before you this morning.

As Assistant Administrator, I was in charge of administering a most important program at EPA. I was appointed by the President and confirmed by the Senate to undertake the task of administering programs which this committee helped establish: Resource Conservation and Recovery Act [RCRA] and Superfund.

My job at EPA was to insure that improper handling of hazardous waste became a chapter in our Nation's history. My responsibilities included the job of cleaning up more than 400 of the most hazardous waste sites in this country, as well as insuring that new ones would not occur. I was responsible for development and implementation of regulations affecting more than 65,000 generators, transporters, and disposers. I also was in charge of emergency actions caused by spills and other accidents.

Throughout my 10 months at EPA, I was sensitive to the public trust placed in me. As Assistant Administrator, I did my best to meet my responsibilities. My record is a good one and I am proud of it. I made tough decisions and I stand behind them. I can defend the actions I have taken, and I am willing and anxious to do so this morning.

First, I want to lay to rest the suspicions that there was anything sinister or underhanded concerning the termination of my appointment. I have done nothing wrong. I have nothing to hide.

I voluntarily turned over my 1982 appointment calendars to this committee with the knowledge that my calendars would be made fully available to other congressional committees and to the general public. I want to stress, however, that all other records concerning my EPA work have been held by the Agency. I have not been afforded access to my records for purposes of preparing for today's hearing. I have no briefing papers or records to aid my testimony, but I am prepared to testify truthfully to the best of my recollection.

I would like to touch briefly upon several specific areas of inquiry before I submit to your questions.

On Friday, February 4, I was attending EPA-related meetings with Members of the House of Representatives. Upon returning to EPA at 4:30 p.m., I went to the Administrator's offices on the 12th floor for an appointment. There I was handed a press release announcing that I had resigned and was returning to my home State of California.

I was also asked to submit a letter of resignation. I had no warning whatsoever that my resignation would be demanded. I was shocked. I asked for reasons. I was told that an alleged memo was the basis for my dismissal. No opportunity was afforded me for explanation or hearing. I was simply told that if I did not resign, I would be fired. The Agency issued a press release announcing that I had resigned and was returning to California. Sunday my offices were placed under armed guard, with my records remaining at the Agency.

Unfounded charges had been made against me and I had been abruptly told to resign or be fired. I thought that I had done a good job administering an important and difficult program. I concluded that my resignation would create the false impression that I had done something wrong or had something to hide. Accordingly, I refused to resign. Instead, I sought an opportunity to tell my side of whatever stories were circulating.

The only reason given to me as an explanation for my sudden and unexpected firing was the alleged memo, which has been falsely attributed to me. The alleged memo has achieved notoriety in the press. On close examination, it can be ascertained that this alleged memo was placed on blank paper, bears no signature, gives no indication of who wrote it or to whom it is addressed, and it has no date. The alleged memo does, however, represent a stolen readout from a disk which had an index reading "memo to W.H."

The reaction to this alleged memo is characteristic of the manner in which the current EPA crisis has exploded with hysterical and unfounded charges and attacks.

The Administrator and staff at EPA were quick to assume—because the alleged memo was contained in the memory of a typewriter within my offices or shop—that I was the author. It was equally convenient to assume that the initials W.H. meant that this was some underhanded attack meant for consumption by the White House.

The truth of the matter is that one of my assistants drafted the so-called "memo" in response to my request that "talking points" be developed for policy discussions concerning Superfund. I had neither read nor approved these "talking points" prior to the time they were "leaked" by someone and brought to the attention of the Administrator. It is my understanding that the initials "W.H." actually refer to Mr. William Hedeman, who was Superfund Office Director at EPA. My boss at EPA obviously thought the initials meant the White House.

I can understand the difficulties my refusal to resign caused for the White House. Obviously, the White House felt obliged to support the Administrator. However, I thought my resignation would be an admission of wrongdoing. My appointment was terminated on Monday, February 7, without explanation or opportunity for hearing.

If my resignation had been requested in a more civil fashion, mindful of my right to tell my side of the story, I would have had no trouble submitting my signed resignation. However, in the face of an ultimatum to resign or be fired immediately, I chose to stand my ground.

I do not contend that I was fired solely because of the alleged "memo." I am only saying that this was the reason offered for my dismissal. As this committee knows, environmental programs are replete with opportunities for differences of opinion regarding the implementation of programs and policy. Administration of Superfund and RCRA was no exception. Policy differences and disputes existed, and I anticipate that the committee will inquire into several policy areas.

I want to say at the outset that both RCRA and Superfund are on track, and that the intent of Congress is in the process of implementation. To my knowledge, there have been no policy decisions to "go slow." Instead, a concerted effort has been made to implement the legislative intent of Congress.

With regard to my policy decisions, I made every effort to utilize all of the tools enacted by Congress to undertake the job of cleaning up the hundreds of hazardous waste sites targeted by the law. My approach was a pragmatic one. I utilized what was available to me, including administrative orders, consent orders, negotiated settlements, civil litigation, and criminal litigation.

It is important to underscore the fact that my job was to clean up hundreds of the worst toxic waste sites. In these worst cases, barrels and other containers of waste are corroded and leaking. The hazards are present; they exist here and now. They are a clear and present danger. It was my job to protect the public by getting these "most hazardous" sites cleaned up as quickly as possible.

Basically, two enforcement approaches are available to accomplish cleanup. One is to litigate with the disposers. This requires EPA to go in and build its case, to prove that a company disposed at a site, and then bring an enforcement action. Many companies are prepared to fight EPA in the courts and to litigate the extent of their involvement. Under this scenario, it would take 5 to 10 years to determine to what extent a company was responsible. Meanwhile, drums and containers are corroding and leaking. Citizens are alarmed and worried about their towns and the safety of their drinking water. Something must be done quickly.

My response was to negotiate with those responsible. Many business concerns were reluctant at first. Many preferred to fight EPA and litigate weak cases over who was responsible.

What are the results? We have reached settlements which are producing results—clean up right now.

Some have accused me of making "sweetheart deals" with industry. There has been no concrete evidence of any "sweetheart deal." There is no such evidence. All settlements have undergone rigorous examination. For example, the Seymour settlement was approved by a U.S. district court. My job was to get results. To do this, I had to negotiate. I stand behind my actions and the results that were achieved.

Concerning my appointment calendars, I have been accused of lunching and dining with industry representatives and never meeting with representatives of environmental groups. This accusation has also been cited as circumstantial evidence that I made "sweetheart deals" with industry.

In the first place, the many meetings with industry representatives, as recorded in my calendars, are fully consistent with my purposeful strategy of negotiating agreements with industry to get the worst toxic waste sites cleaned up and to protect the public from a real and present danger. The record will show—and I fully anticipate that I will be questioned in detail concerning the settlements I negotiated—that no single company received what can be termed favorable treatment.

It has been alleged that I never met with environmental groups. I point out that my environmental constituency was a unique combination. It included those citizens who must live in towns and cities near toxic waste sites. My calendars demonstrate that I was frequently on the road visiting these sites, assessing the extent and nature of the hazards in person, the methods and cost of cleanup, and the threat and solutions for the citizens.

I made myself available to the people who were most affected by the hazardous waste sites. I conducted onsite inspections and listened carefully to the public. It also included state directors, who must implement regulations to ensure safe handling of hazardous waste.

There have also been accusations that cleanup of certain sites were placed on an "election-track" or were delayed or hastened with political considerations in mind. I never participated in any such activity.

Much has also been said about the existence of paper shredders at EPA. I can only speak for my office or "shop." I certainly never shredded any papers or other documents. I have never used a shredder. So far as I know, no one on my staff ever shredded or otherwise attempted to destroy or conceal any documents or other records during my tenure at EPA.

Finally, with regard to documents and records subpenaed by congressional committees, I never advocated the withholding of any documents from the Congress.

The hazardous waste program is a lightning rod at EPA. It is a good program and a strong program. It is achieving the results this committee intended. I plan to continue to support the program, and to support EPA's thousands of dedicated employees all over America.

Thank you very much.

Senator STAFFORD. Thank you for your opening statement.

The Chair observes that Senators Symms, Abdnor, and Hart have come in since we started. If any have opening statements they could be placed in the record before Ms. Lavelle's statement.

Senator ABDNOR. Thank you, I have none.

Senator SYMMS. I have none.

Senator STAFFORD. It would be the Chair's intent to limit to 10 minutes the opening round of questions, with the understanding that we will rotate through the committee as often as necessary to satisfy everybody's need. Is that agreeable?

Senator RANDOLPH. It is agreeable.

Senator STAFFORD. The Chair will have to be prompt about imposing the 10-minute limitation or we will subside into more problems.

Having said that then, I will open the questioning.

Ms. Lavelle, in view of all the publicity EPA has been receiving lately as to the charges and countercharges that are occurring with respect to the Agency and many of its people and the general turbulence, it is impossible to ignore it. I have to ask you, in your opinion, do you think EPA presently can function and carry out the various duties that are assigned to it with respect to clean air, clean water, toxic substances, Superfund, and so forth?

Ms. **Lavelle**. I can only address, Mr. Chairman, with the perceived reaction of people in the RCRA and Superfund offices, and this is traumatic. I have consciously tried to avoid speaking with any employees so as not to hurt them, but those who have sent me notes are very disappointed, there is a state of shock over there, and there is also somewhat a state of paranoia that everything you say or thought you said or write might appear to be taken out of context. It is a very troublesome time now.

Senator **Stafford**. Your answer I believe is that in your opinion the heart of the Agency that covers RCRA and Superfund is currently demoralized, is that a fair statement?

Ms. **Lavelle**. I believe so, yes, sir, they are certainly in shock.

Senator **Stafford**. That is of deep concern to us who helped bring Superfund into being and are very much concerned with its implementation.

You have told this committee staff that the occasion of your dismissal was a memorandum written either by you or a member of your personal staff which states that other officials of EPA were, and I believe this was an accurate quote, "alienating the primary constituencies of the Reagan administration and the business community."

During your tenure at the Agency were you operating under the belief in negotiating agreements with industry you were carrying out the will of this administration?

Ms. **Lavelle**. Yes, sir, in negotiating settlements, I thought that, and I had reason to believe that that was most definitely the area I should assume. That memo you quoted from, I did not author.

Senator **Stafford**. I think you pointed that out in your opening statement.

I have to ask you this then in view of your first response. You were, in your judgment, carrying out the will of the administration, did you find as a personal matter any conflict between the Reagan administration's will with respect to administration of Superfund and RCRA and your own view as to how the program should be implemented?

Ms. **Lavelle**. I thought I was managing the program consistent with the policy direction of this administration, and, in fact, I had a number of support reinforcements that I was indeed doing this.

For instance, we had what we called a strategic plan we took to the Administrator in September anticipating for the first time a plan would be driving our budget submission. All of the policy, most of the policy considerations were outlined at that time.

Additionally, the Administrator up to the point of my dismissal was supporting the approach as opposed to litigation—not in lieu of litigation but complementing litigation.

Senator **Stafford**. As you know the Administrator wrote the Department of Justice on several occasions to request investigations of your conduct. It is my understanding that neither you or your lawyers have seen copies of the letter in question. Am I correct in that?

Ms. Lavelle. That is correct, I have never seen them—here they are right now.

Senator Stafford. Just delivered to you this morning.

Ms. Lavelle. Just now.

Senator Stafford. Last evening copies of those letters were delivered to us. Since released to us without conditions attached, we intend to make copies available to the public. (See pp. 71–92.)

On March 23, 1982 this committee conducted a hearing on your nomination. At that hearing you agreed to recuse yourself from your past employer, Aerojet.

Enclosed with the letter dated February 8, 1983, however, there was a three-page memo dealing with a waste site in Stringfellow, Calif. Aerojet is one of the dumpsters at that site. There was also an EPA form 5040–S, indicating that this memorandum was transmitted to Sonia Crow, the Regional EPA Administrator in California.

The transmission record states that the originator of the transmission is Rita M. Lavelle and below your name is a notation "Will call you." (See p. 79.)

First, this appears to me to be a clear violation of the pledge made to this committee to recuse yourself from matters involving Aerojet.

Second, I must ask, did you make that telephone call to Sonia Crow, and if so what did the two of you discuss?

Ms. Lavelle. Is this what you are referring to, sir?

Senator Stafford. Yes, it is.

Ms. Lavelle. This is the first time I have seen this.

Sir, if I had the original maybe I could answer your question more. I have examined all of my dealings and consistent with the way I conducted myself, I have never been involved in any decisionmaking policy-setting meeting or scenario after I recused myself. Maybe if I had the original I would know. That is not my handwriting at the top by the way. It could have been from my office, I don't know what we are talking about here, I am sorry.

Senator Stafford. Then do we understand that you are unable to say at this point whether or not you did originate that?

Ms. Lavelle. By the way, when did I recuse myself—OK, June 18, if you will notice the date that says June 15.

Senator Stafford. Yes; the date on our copy appears to be June 15, 1982, and says "eyes only" in quotes.

Ms. Lavelle. And 3 days later I recused myself. And that would be consistent. The strategy at that point was, region IX did not have the expertise or resources to run it, so we would run it in Washington. I found out Thursday night for the first time that Aerojet was one of the many companies that had used that site and I recused myself according to my commitment.

Senator Stafford. So the testimony should show that if you did originate this transmission, you subsequently, at an early date, recused yourself from this matter?

Ms. Lavelle. That transmission appears to be June 15, I recused myself June 18, on a Friday, because of a briefing Thursday evening, a late briefing where I was for the first time presented with the list of responsible parties, because I was going to sign all of the notice letters to the generators and disposers. I immediately recused myself and put Mr. Hedeman in charge of the program. So this is prior to my recusing.

Senator STAFFORD. I should point out to my colleagues who arrived after Ms. Lavelle began her testimony, that she is under oath in the testimony she is presenting to this committee and she voluntarily took the oath.

Do you have any idea why Mrs. Gorsuch, or Mrs. Burford now, waited until February 8, 4 days after she demanded your resignation and 1 day after you were dismissed by the President, to forward this matter to the Justice Department?

Ms. LAVELLE. I have no idea. It was never brought up to me when she asked for my resignation.

Senator STAFFORD. In a letter dated February 2, 1983 from Mrs. Gorsuch to the Deputy Attorney General, it is alleged that you engaged in an ex parte communication in a case in litigation. The case is *United States* v. *Outboard Marine Corporation and Monsanto Company.*

Did you ever meet with representatives of either defendant to discuss settlement terms or litigation posture when Government attorneys assigned to the case were not present. If so would you please tell us the date, time, and location of the meetings and the names of the persons present at such meetings?

Ms. LAVELLE. Senator, I never had such a meeting. I did, however, and I don't have the date, I did have, however—I gave a speech in Chicago to the chamber of commerce, and in my speech I talked about our approach of negotiating and litigating.

After that speech, as I remember it, two people came to me, either representing Outboard Marine or the company itself, saying are you serious about negotiating rather than litigating, and I said yes, that is the posture with this program, and they said good, we will be approaching the Agency. Now that is the only conversation I ever had with anybody from Outboard Marine.

Senator STAFFORD. Thank you.

The Chair has imposed a 10-minute rule on itself and I will call on my colleague, Senator Randolph.

Senator RANDOLPH. Just to go back, you were asked by the Administrator of EPA to leave the agency, is that correct?

Ms. LAVELLE. Yes, sir, on Friday evening.

Senator RANDOLPH. I just want to have that clear for the record. You were asked to appear for a meeting, is that correct?

Ms. LAVELLE. For a meeting? I was asked to go back to my office to meet with my office directors. Is that what you meant, sir? I am not following you.

Senator RANDOLPH. I want to be clear about it, and I don't want to belabor the point.

But Ms. Lavelle, you said on February 4, you went to a meeting, and that meeting, as I understand it, was on the 12th floor of the EPA building.

Ms. LAVELLE. Yes, sir.

Senator RANDOLPH. What I am asking is who told you about your dismissal?

Ms. **Lavelle**. The Administrator, Mrs. Burford.

Senator **Randolph**. Thank you very much.

The members of the House committees have been seeking, so we understand, documents that relate to the implementation and enforcement of the Superfund program.

These documents concern the programs under the direct responsibility of your office, is that correct?

Ms. **Lavelle**. Yes, sir.

Senator **Randolph**. Until a few days ago, the Agency had refused to turn over these materials to the House, is that correct?

Ms. **Lavelle**. Yes, sir.

Senator **Randolph**. At the time these documents were originally sought, what was your position, Ms. Lavelle, on whether they should be made available?

Ms. **Lavelle**. Senator, because of my background with the defense company, I knew that there were ways that one could make documents available to Congress consistent with both congressional and agencies, for the public good, be not made public. Internally that is the position I was arguing for.

In fact, I had met with Mr. Levitas, working out an arrangement wherein his staff could come into our offices in a more expedited matter to have the files available to him when he wanted staff people to come, and anticipated that would be the way the agency would approach it.

Senator **Randolph**. In your advice to other officials at EPA—and I think this is important—on how that Agency should respond to the request for documents, was your advice followed?

Ms. **Lavelle**. No, sir, my advice was not followed.

Senator **Randolph**. Do you have any further comment on why it was not followed?

Ms. **Lavelle**. As I remember it, I brought up the conversation that I had with Mr. Levitas with our general counsel, Mr. Robert Perry, after coming back from the meeting with Mr. Levitas, saying there must be a way we can work this out, et cetera, et cetera.

The next thing I knew—and it is hard for me to reconstruct when it was, if it was that afternoon or the next few days, I was told that this was to be a matter of executive privilege, that—while I understood commonsense that there are things that are sensitive and should not be given to the public, that this matter was going to be handled in another way—Mr. Perry was entirely in charge of the effort from then on. I had nothing to do with it other than having my people turn over all the documents. It was a very resource-intensive exercise and one that was rather frustrating because we had a lot of things to do, but I always complied with the orders and the direction I was given.

By the way, I also complained about the inordinate workload this was putting on my people, 15,000 hours of staff work, and to no avail, it was after hours work and on weekends, but that was taken into consideration obviously, but the decision was not mine. I made my input and it was overruled.

Senator **Randolph**. Mrs. Burford, the Administrator, appeared before this committee last week, and discussed the EPA budget for fiscal year 1984. There also was discussion of the operation of the Agency itself.

As I recall, Mr. Chairman, Mrs. Burford expressed a belief that she felt that EPA had a good record under her direction. She attributed the criticism of the Agency to be political harassment.

Would you have any comment on that?

Ms. LAVELLE. Well, obviously I am proud of the record of this particular program, that is why I think personally I was a good manager in delivering what Congress intended.

I don't know that it is a concerted harassment campaign, I think it is more of a result when one tends to antagonize rather than sell. We are all human beings on this Earth and I think we want to reach the same objective. It is just the way we get there. There should be good discussion and people can disagree.

Senator RANDOLPH. Are you saying, Ms. Lavelle, you would not agree with Mrs. Burford's statement in essence, that a political vendetta is being waged against, EPA.

Ms. LAVELLE. No, I think it is a reaction—my personal reaction is that it is some people who have been antagonized and confronted, reacting rather than like I always tried with our program to basically sell the program, seek counsel, seek imput, and I think if you are operating in an antagonistic mode, people are going to attack you.

So I don't think there is any concerted program of harassment, just sort of a culmination of ongoing events and human interactions.

Senator RANDOLPH. Thank you.

We have had the feeling that many people are talking about the failure of EPA to carry out its mandate. That has not just been in recent days or weeks, it has been over a longer period of time, perhaps for 2 years.

These questions have involved other individuals and other programs, not just you, and I think it is important for us to say today that you, Ms. Lavelle, have been dismissed; is that correct?

Ms. LAVELLE. That certainly is correct.

Senator RANDOLPH. You are not in the job you held; is that correct?

Ms. LAVELLE. That certainly is correct.

Senator RANDOLPH. The Justice Department has been asked to investigate some of your activities; is that correct?

Ms. LAVELLE. Well, I read about it in the press and now for the first time, I read about it in this letter.

Senator RANDOLPH. After the fact.

Ms. LAVELLE. Yes, after the fact.

Senator RANDOLPH. I don't like to use the word, and I hope you won't be upset, but do you think some persons want you to be a scapegoat?

Ms. LAVELLE. There is a dramatic pattern of coincidences here.

Senator RANDOLPH. How much time have I taken?

Senator STAFFORD. You have 1 more minute.

Senator RANDOLPH. I believe I will stop here and wait until the next round.

Senator STAFFORD. Senator Chafee.

Senator **Chafee**. On page 6 of your testimony, you say in justification of your negotiation efforts that, basically, there are two enforcement approaches; namely, to litigate or negotiate, and in the litigation scenario, you say it would take 5 to 10 years to determine to what extent a company is responsible and meanwhile these drums are leaking and corroding.

But in fact, Miss Lavelle, there is a third avenue to follow, to go in and clean up and then go after the offender for triple damages, is that not so?

Ms. **Lavelle**. That is an approach.

May I continue?

Senator **Chafee**. Yes.

Ms. **Lavelle**. It is an approach that we were employing in some States.

Let me caveat that kind of an approach with the fact that, first, to go for triple damages, you have to file an administrative order, but I think more importantly, will the responsible parties be there and be solvent when you have cleaned up, and that was the consideration that we were always playing with when we were going through the sites to determine which particular approach we would use with that site.

Senator **Chafee**. I would suggest that that is a very, very powerful tool, which you have discounted in your testimony. Furthermore, it involves triple damages, and the companies you are dealing with were not fly-by-night companies. They were companies of some substance that one could expect to be there during the litigation.

Ms. **Lavelle**. Most certainly.

Senator **Chafee**. Ms. Lavelle, on page 2 of your testimony, you say "I can defend the actions I have taken, and I am willing and anxious to do so this morning."

Ms. **Lavelle**. Yes.

Senator **Chafee**. There are allegations that there were sweetheart deals and people had been wining and dining you. There is the allegation that you have pursued these people more in the restaurants than in the courts.

For example, in the *Stauffer* case, you had dinner with Stauffer executives the night before the settlement was announced.

Ms. **Lavelle**. Yes, sir, I would like to talk about that Stauffer settlement.

First of all, it is a good settlement. Stauffer is to be congratulated in my understanding and my interpretation for being the first in the industry to step out and assume their responsibilities rather than litigating that case to death.

Right now Woburn is being cleaned up, because Stauffer assumed their responsibilities. If I had my notes, I could go through details. Obviously, we thought it was a fair settlement.

But Stauffer was the lone soldier at that point with the rest of the chemical industry. The president, Mr. Morely, was considered not too strong a member of the chemical team, he was a risk taker, and I am glad to say I had the opportunity to meet him.

I think that he, for the environmental good of this Nation, made the right decision. He had a number of decisions to make and we did too. I think it is a good settlement and I might have notes later on to go into some specifics.

But that settlement was negotiated before I had that dinner with him. I just happened to have—the time was coincidental.

Senator CHAFEE. As you know, there is a department regulation dealing with ex parte meetings. It seems to me that you were violating that department injunction, or certainly being extremely insensitive to the expected proprieties by dining and meeting so frequently with the very polluters that your agency, and particularly your section of that agency, was designated to pursue.

Ms. LAVELLE. That is one observation one could make. Obviously I don't agree with it. It was not many times I was being wined and dined. I was working. In fact, certain members of this committee, I would follow them up in a speech at some of these lunches that were called industry lunches.

But I think more importantly, ex parte, I was mindful of ex parte relationships when—I think that my role was basically to sell industry on an approach.

When I talked to CEO, it was not dealing with litigation, et cetera, it was just a commitment that we were willing as an agency to negotiate first, litigate second. That we were willing to come to the table and at least talk.

When it was appropriate that attorneys be there, there was a filed case—again without my notes—I don't think Woburn was a filed case. I had the attorney there though.

I think you should understand it is not my job to negotiate these settlements. It was my job to settle the willingness, the approach, and then the attorneys and the technical people work with the attorneys from those companies across the table.

Senator CHAFEE. I want to get into the enforcement procedure a little bit, because as we pointed out, these hearings are to try and improve the actions of the Agency as well as to find out what some of the problems are.

Who sets the enforcement policy? I say the attorneys were off on their own, but under the enforcement policies, as I understand the Agency, it is divided. You have the General Counsel, but you had attorneys working for you as well, enforcement attorneys; is that not correct?

Ms. LAVELLE. That is not exactly correct. When Mrs. Burford came in, she took the attorneys from the various program officers and put them into one of the pools. Within the pool, these attorneys were then assigned for either General Counsel work on regulations or enforcement work to program offices, so that there was a group of attorneys within Mr. Perry's office that he had us on the enforcement cases here in headquarters.

In the regions, there was a regional counsel who had his or her attorneys who reported directly to Mr. Perry, did not report to the regional administrator. That was the legal source there.

Yes, then my people were the technical, quote, unquote, resources. However, some of them are qualified attorneys, yes. But as they are in the regions, we had both technical and legal skills in the program office, but they were not functioning as our enforcement attorneys.

Senator **Chafee**. Who decides the direction to take? You say there are two; I say there are three, but obviously they have far different ramifications as far as the polluter is concerned.

If you go in and clean up and then come after the polluter for triple damages, that is a very, very powerful weapon you have at your hand.

Ms. **Lavelle**. Extremely powerful.

Senator **Chafee**. As opposed to negotiating a settlement with one polluter in a dump, and reaching whatever he thinks is a satisfactory conclusion subject to your approving it.

Now you are saying you did not approve it, that was not for you?

Ms. **Lavelle**. No, let me explain how this worked.

Out of a list of 418 sites, it was my commitment to try and get the 418 either cleaned up or pretty much along the way so to come back to the Congress in 1984 and report to that.

How do you do that?

You basically weigh the approach with each specific case.

Is this one the one we should go in; is this one we should do the study and then go to negotiation the entire cost with the companies?

Is this one where we should negotiate up front because the companies would come in and do the clean up work?

Senator **Chafee**. When you say "you" you balance, in other words, you have a direct report——

Ms. **Lavelle**. You are right. The program office makes the determination in consultation with the legal office, as well as the regional offices making the decision, as to the strength of the approach, various approaches—we have gone through that. There are a lot of scenarios.

The program obviously determines that.

Senator **Chafee**. I do not believe it is accurate for you to say that you did not get into any of the details; that what you were was just an up-front person to try to persuade the chemical companies to be nice and come forward and recognize the advisability of making a settlement, for example.

Ms. **Lavelle**. You are right, I did get into some of the negotiations, and I will defend that.

Senator **Stafford**. Senator Moynihan.

Senator **Moynihan**. Thank you, Mr. Chairman.

Ms. Lavelle, this is not the easiest thing to say, but we have come into possession of some information which would suggest that there was a hidden agenda in the Environmental Protection Agency right from the beginning. It involves the Love Canal, and I ask your patience if I say it also involves me, because that is how I came by the information.

As much as any event that mobilized America's concern for toxic waste sites was the revelation about the Love Canal.

In July 1981, we were informed by the EPA that there would be a $4 million grant for the Love Canal clean up from the Superfund. It did not come, and it did not come; there was this detail and that study. Finally in March, on March 8, I wrote Mrs. Gorsuch then, now Mrs. Burford, to say, "We are getting into a situation where if you don't act soon, we will lose this possibility and another year will go by." Almost a year had gone by.

You appeared before this committee two weeks later, on March 23 and we discussed this matter. I also asked you about this when you came by to call on me. At the hearing you were cooperative, and in the end I thanked you and I said, "Fine, I think that is fair." You could not ask more in the way of a response. Now that was March 23. About 2 weeks later, on April 8, a meeting took place in your office, of which I have a transcript. It was a meeting in which the Association of State and Territorial Solid Waste Management Officials met with you to discuss a grant proposal they had which would, they thought, facilitate your work on setting national hazardous waste management standards and getting the States to agree. The pros or cons of the grant I don't defend, it was something they thought was a good idea.

One of the persons present there was Norman Nossenchek, the Director of Waste Management for New York, and he was speaking to the association.

Now, this is the transcript which perhaps you will recall:

> Rita: About the degree of hazard grant * * * I have a philosophical problem with the concept; I don't believe in giving Government dollars to any group; I'm also upset with the position taken by your group in testimony; I'm agitated about your position on the authorization and decreased funding issues. How closely can we work together doing studies? It is an infeasible probability with such a philosophical difference. You know, we play hard ball in California.* * *

Then later on, you say:

> We need State input. But everyplace I go there is Norm, and I don't want to find those letters from Moynihan's office with your name at the bottom. We have to work closely and have a commitment. I don't want you to talk to Senators until we agree beforehand.
>
> I just want Norm and I to get along. My hearing was almost held up because of that letter, and I don't know where he got that letter.

Now I didn't almost hold up your hearing. You recall your hearing, it was a very generous and happy occasion, and it was nothing unusual for me to be in touch with the Director of the New York State Office of Hazardous Waste Management.

Now is it the case that you are philosophically opposed to giving dollars to any group; is it the case you want State officials to have nothing to do with us? The grant was not given—it may be hard ball or a bad grant proposal, I don't know.

But do you recall that occasion, and could you help me?

Ms. LAVELLE. I don't know how you got that transcript.

Senator MOYNIHAN. It was provided by the Office of Technology Assessment.

Ms. LAVELLE. Was Mr. Hirshorn present at that meeting?

Senator MOYNIHAN. Mr. Hirshorn is not listed.

Ms. LAVELLE. How did you get the transcript?

Senator MOYNIHAN. Well, now——

Ms. LAVELLE. That is the problem with this whole approach, "Who shot John?," "Who shot Jane?"

Senator MOYNIHAN. Who said what.

Ms. LAVELLE. First of all, SWAMO does have a grant under my leadership, and that is not true the grant was not given. Mr. Valnetti from the State of Vermont is in charge, and we work very hard as to what the agency, what the States want with such a grant, and, in fact, the States are critical to the success of RCRA. I probably said something like: "Norm, how come when there is always a fight you are there," and I have a philosophical problem with giving Government money to a group that was used entirely to lobby, and that still remained a philosophical problem, that is my problem.

However, we worked that out with SWAMO, and they have a grant, and they are doing an excellent job in getting the State Directors in contact with our people, physically able to attend meetings, so that is settled.

What was the second question about, the Love Canal?

I tried to work very closely with your office and was in contact with you.

Senator MOYNIHAN. But you said to this man my hearing was almost held up because of that.

Ms. LAVELLE. I did not say that, because I did not think that.

Senator MOYNIHAN. So the question is the transcript.

Ms. LAVELLE. That just does not seem—first of all, it was not held, you and I had a very good productive meeting, and it made me aware of the Love Canal, and it did not lead up to me being held up. That is why I am surprised if I said that.

Senator MOYNIHAN. Then I won't continue on this line, Mr. Chairman, but I think the committee should have these documents and will want to consider their import.

May I say, sir, there is a meeting at the White House honoring Senator Javits. May I be excused from the committee?

Senator STAFFORD. Please do and convey my regrets that I am not there.

Senator Mitchell.

Senator DOMENICI. Might I ask a question before the Senator leaves?

Senator STAFFORD. Certainly.

Senator DOMENICI. I am not aware of any transcripts being provided to any of us about statements that she made or didn't make. I don't understand what the distinguished Senator from New York is talking about having transcripts provided by OTA, or whoever it is. Could you help us for the record?

Senator MOYNIHAN. There was about 3 days' notice about this hearing——

Senator DOMENICI. I understand that, I didn't ask about that, I said transcripts.

Senator MOYNIHAN. Please have the kindness to hear me out. Suddenly yesterday an official at OTA said: You might be interested in this transcript.

Senator DOMENICI. Well, that is all I wanted to know.

Senator STAFFORD. We will make that a part of the hearing record. (See p. 93.)

Ms. LAVELLE. Senator Moynihan, I would point out that—I am learning, believe me—I would point out that to my knowledge there was no transcript taken at that meeting; in other words, there were no recording notes——

Senator MOYNIHAN. Why don't you and your attorneys take a look at this, then?

Senator STAFFORD. Senator Mitchell.

Senator MITCHELL. Ms. Lavelle, the chairman asked you about the letter sent by Mrs. Gorsuch on February 2 to the Deputy Attorney General requesting an investigation of your alleged ex parte communication with the defendant in the *Outboard Marine* case.

In response to that question, you said that you had no such meetings. I think you said you never had a meeting with anybody from Outboard Marine or from Monsanto, and you said what happened was you gave a speech in Chicago in which you discussed the alternative of negotiation and litigation after the meeting. A representative of the company came up, from Outboard Marine, and said: Are you serious about negotiation? I think those are your words, you said, yes, you were, and later they submitted something to the attorneys. And that was the extent of your participation in that case ex parte. Do you recall your testimony to that effect?

Ms. LAVELLE. I didn't mention Monsanto.

Senator MITCHELL. You said there was no one from Monsanto.

Ms. LAVELLE. I have never spoken with Outboard Marine.

The suit is only filed against Outboard Marine, not Monsanto. Outboard Marine filed another suit.

Senator MITCHELL. Did you have such discussion with officials from Monsanto?

Ms. LAVELLE. The extent of discussions from Monsanto, as I can reconstruct it, was that Monsanto was one of the last companies to agree to go with this negotiation approach, and in communicating that to me, I think the name Outboard Marine came up, but that was the extent of that.

Senator MITCHELL. My question is, did you meet with officials of the Monsanto Co. and discuss with them this case?

Ms. LAVELLE. No.

Senator MITCHELL. You never did?

Ms. LAVELLE. No, other than that occasional comment.

Senator MITCHELL. Other than what?

Ms. LAVELLE. The occasional comment in passing.

Senator MITCHELL. You said with respect to that occasional comment there was no one from Monsanto there?

Ms. LAVELLE. I am not making myself clear.

Senator MITCHELL. You gave a speech in Chicago?

Ms. LAVELLE. Yes, Outboard Marine was there.

Later Monsanto—I don't have dates—but Monsanto came to me and introduced me to a Dr. Mullins——

Senator MITCHELL. When you say "Monsanto," that is a company; who is the person?

Ms. LAVELLE. Dr. McCarvel. He introduced me to Dr. Mullins, who was their person reporting to the president of the company, to move out and get these sites cleaned up, rather than litigating all over the country.

Senator MITCHELL. Where did the meeting take place?

Ms. LAVELLE. As I remember, it was a lunch.

Senator MITCHELL. Was there any other discussion about the case other than the introduction of the official who was identified as the person to get Monsanto cleaned up?

Ms. LAVELLE. No.

Senator MITCHELL. Did you discuss the case?

Ms. LAVELLE. No, sir.

Senator MITCHELL. Did you have any other discussion with officials of Outboard Marine or Monsanto regarding that case, other than the two incidents you just described?

Ms. LAVELLE. Not that I can remember.

Senator MITCHELL. Now, if you could look at the letter from Mrs. Gorsuch, as she signed it at that time to the Deputy Attorney General, I direct your attention to the last sentence of the first paragraph: "I enclose Ms. Lavelle's statement on this matter, which she provided to my office."

Now, accompanying that letter there is a one-paragraph statement, and I ask you if you would now read that aloud, please.

Ms. LAVELLE. "After a long period of time, OMC and Monsanto were persuaded by RML that we might consider a new serious offer"——

Senator MITCHELL. Stop right there. "RML" referred to you?

Ms. LAVELLE. I imagine so, this is a memo that I never authored, or never wrote.

Senator MITCHELL. Did you provide this statement to Mrs. Burford's office, as she indicated in her letter?

Ms. LAVELLE. I never gave it to her, she had a copy of the notes from John Daniel, but I never gave her anything like this. In other words——

Senator MITCHELL. Then to your recollection, the statement in the letter signed by Mrs. Gorsuch, which says, "I enclose Ms. Lavelle's statement, which she provided to my office" is in error? You never provided that to her office?

Ms. LAVELLE. I provided the alleged memo, quote, unquote, to Mr. Daniel. The inquiry was——

Senator MITCHELL. This statement was in that memorandum?

Ms. LAVELLE. Yes.

Senator MITCHELL. "After a long period of time, OMB"—et cetera, et cetera. Had you seen those words before, had you read this statement before today?

Ms. LAVELLE. I had read it when I gave the notes to Mr. Daniel.

Senator MITCHELL. When you gave the notes to Mr. Daniel?

Ms. LAVELLE. Right.

Senator MITCHELL. Did you write these words?

Ms. LAVELLE. No.

Senator MITCHELL. Do you know who wrote them?

Ms. LAVELLE. Yes, sir, a member of my staff, Mr. Gene Gold.

Senator MITCHELL. Do you now regard that as an accurate statement, after a long period of time you persuaded Outboard Marine and Monsanto that EPA might seriously consider a settlement offer?

Ms. LAVELLE. "Persuade" is a strong word. I indicated that this was the approach, I thought to be the approach of the administration.

Senator MITCHELL. You have indicated that your contacts were limited exclusively to a statement made by you to a question after a speech in which somebody said: Are you serious about your interest in negotiating? And you said yes.

Ms. LAVELLE. Right.

Senator MITCHELL. Your other meeting was with Monsanto, where you discussed the introduction of an official to you?

Ms. LAVELLE. Yes, sir.

Senator MITCHELL. That could hardly be taken as persuading.

Ms. LAVELLE. Yes.

Senator MITCHELL. Would you say this is an inaccurate statement?

Ms. LAVELLE. Yes.

Senator MITCHELL. Did you point that out to Mrs. Burford?

Ms. LAVELLE. I was never able to discuss this entire quote-unquote memo with her.

Senator MITCHELL. Did you make any effort to communicate with her in writing or through any other official?

Ms. LAVELLE. No, sir; it was never requested.

Senator MITCHELL. At the luncheon with the Monsanto officials, were there any EPA or Justice Department attorneys present?

Ms. LAVELLE. I don't believe so, sir.

Senator MITCHELL. Were they notified in advance of your meeting?

Ms. LAVELLE. No, it was a luncheon.

Senator MITCHELL. Now, on a separate matter, on page 8 of your statement you said, "I never participated in such activities."

If I could broaden that a little bit and ask, while you were employed at EPA, did you at any time discuss or communicate in any way with any person about the possible political implications of any matter before you as Assistant Administrator for Solid Waste?

Ms. LAVELLE. When we were taking actions, we only discussed the effect in the community and political considerations, but I can stand before you and say that was just a matter of discussion, mostly after the fact.

Senator MITCHELL. Could you please identify for me, to the best of your recollection, each instance in which you described the political implications of the action you took and what was said, and with whom?

Ms. LAVELLE. I think, Senator, political implications is a little bit strong as a phrase. It was something similar to construction grant operation, when you have the money, in other words, you made all the engineering decisions, the approach we were going to take, it was who was the representative from the district and who was the Governor, and the Senator, et cetera. That was about the gist of it.

The only exception was, I was setting up the scenario consistent with the 10-percent requirement where I was looking to which Governors and State legislators had their 10 percent, so that could be constructed as a political——

Senator MITCHELL. My time has expired. I will go into that later.

Senator STAFFORD. Thank you. Senator Baucus.

Senator BAUCUS. Let me just continue that same line of questioning.

Who did you talk to, or did the Administrator talk to, in either setting or administering EPA policy?

Ms. LAVELLE. Who did the Administrator talk with?

Senator BAUCUS. Who did you talk with? OMB or the Justice Department? What were the discussions, and would you characterize the discussions as negligible? Did they occur at all?

Ms. LAVELLE. OMB, when you go through the budget process, there is a lot of good heated discussion back and forth. The policy was set by us, though. I guess that is what you are really after.

Senator BAUCUS. Who is "us"?

Ms. LAVELLE. By EPA.

Senator BAUCUS. By Mrs. Burford or by you, or by whom?

Ms. LAVELLE. I guess you could say—my areas of responsibility, I guess you could say I set the policies, and always sought the Administrator's direction, so she set them, I guess.

Senator BAUCUS. Did she give you direction, did she give you a moderate amount of direction as a general rule?

Ms. LAVELLE. I think the best way to characterize it is in the beginning when I was new, obviously there was more direction. As I thought I understood her philosophy and the direction I was to take, it became less and less.

It then resulted in—like the September briefing, where we were going to go with our budget presentation.

Senator BAUCUS. Was she involved in the particular items, the issues we have been discussing, the *Monsanto* case——

Ms. LAVELLE. You mean Outboard Marine?

Senator BAUCUS. Anything that has arisen in this morning's hearing.

Ms. LAVELLE. Well, I am not trying to avoid your question. Outboard Marine I don't remember.

Seymour and Chemdyne, I think we reviewed those with her when we were going through the negotiation process to the best of my recollection.

Senator BAUCUS. Did any White House personnel talk directly or indirectly to you?

Ms. LAVELLE. Surely, but it was always more informational.

Senator BAUCUS. Give us an example.

Ms. LAVELLE. The President was going to the State of North Carolina when we had problems with land fill, and the Governor was involved. They just need to know what the Agency position is, and where we are going and what the information is.

Senator BAUCUS. Did the White House give you a policy direction?

Ms. LAVELLE. As far as I know, the answer is no.

Senator BAUCUS. Did any other officials get involved in that, like Secretary Watt?

Ms. LAVELLE. The Superfund program dealt with 12 different agencies, on an interagency task force. As such, we work with them, but I would not characterize it as a policy-setting mode. I cannot speak for the Administrator. I don't know what interaction she had, of course.

Does that make sense?

Senator BAUCUS. You had latitude. Were you constrained in your latitude because of involvement by the White House, Department of Interior, the Administrator, whoever.

Give me examples of how you were constrained by any of those officials in the administration, and, second, where you had full range to do whatever you wanted to do within the difficult provisions of the statute.

Ms. Lavelle. I really cannot think of any instance right now where another agency, quote, unquote, constrained a policy on our part. It was more of a collegial approach when there were overlappings of jurisdictions.

Senator Baucus. So the Administration had considerable dealings with the agency.

Ms. Lavelle. Not that much. I don't want to over-characterize involvement, but there were some specific sites where there were overlapping authorities, and it was more collegial.

Senator Baucus. What would that be?

Ms. Lavelle. Like Missouri, the State of Missouri.

Senator Baucus. Who else was involved?

Ms. Lavelle. At times it was FEMA; FDA at one point, and HHS, for the health risk assessments.

Senator Baucus. What about enforcement, was the Attorney General's Office or any other official in the administration outside EPA involved in enforcement actions and influencing decisions?

Ms. Lavelle. All our conversations with the Department of Justice were to be in conjunction with Mr. Perry, so there was one constituent——

Senator Baucus. Who is Mr. Perry?

Ms. Lavelle. The general counsel for the Agency.

I think that would be a more appropriate question for him to answer. To my knowledge, no.

Senator Baucus. Now that you are no longer at the Agency, can you sit back for a couple of minutes and indicate to us how are we going to resurrect the credibility of EPA?

If you could decide what it is that is necessary to reestablish credibility of the Agency, what would it be, assuming you had carte blanche, what would it be?

Ms. Lavelle. Well, I have read some of Mr. Moynihan's approach, but I don't know that changing the structure is, quote, unquote, the solution.

You have there a strong isolated group of experienced people. There are people there—we are very diverse and rather independent.

Senator Baucus. Is there confusion, mismanagement?

Ms. Lavelle. I have thought along that line. I would not characterize it as mismanagement. The programs themselves, I think, are managed quite well with a strong hand. I just never saw that strong a direction from on top, so I would say more than conscious mismanagement for whatever reasons, I don't think that is a fair assessment situation. It was more. There was no management from on top.

Senator Baucus. No management?

Ms. Lavelle. I think that is a more appropriate way to put it.

Senator Baucus. Would you say we need a new administrator, somebody who could manage?

Ms. Lavelle. Well, I think we need stronger management at the top.

Senator Baucus. Stronger than we now have?

Ms. Lavelle. Yes, sir; and how that would be achieved is not my place to suggest. I could suggest, but I won't suggest it.

Senator Baucus. What kind of suggestion would you have?

Ms. LAVELLE. I just think that there should have been stronger management at the top in terms of direction, where we are going.

For instance, there are good technical critical skills in the Agency that could have gone cross-program, and we could have put some of the people into the air or water program, and I would have looked to see more of that cross-fertilization.

The budget process, we acted independent of one another, and perhaps there is cross-fertilization that could have occurred there at more savings to taxpayers.

Senator BAUCUS. Thank you, very much.

Senator STAFFORD. Thank you, Senator Baucus.

Senator Hart.

Senator HART. Ms. Lavelle, from the time your name was submitted in nomination for the EPA position to the time you were dismissed, on how many occasions did you have direct personal contact with Mr. Meese or anyone else at the White House?

Ms. LAVELLE. From my confirmation to dismissal.

Senator HART. No, submitted in nomination.

Ms. LAVELLE. Maybe 10 or 12 times.

Senator HART. Were those personal contacts, oral, person to person, by telephone, or in writing?

Ms. LAVELLE. Never in writing, either phone or in person.

Senator HART. Were those dozen contacts with Mr. Meese himself?

Ms. LAVELLE. Sometimes it was, a lot of times with Mr. Craig Fuller.

Senator HART. What is his title?

Ms. LAVELLE. I am not sure. I think he is head of domestic policy reporting to Mr. Meese.

Senator HART. What is the nature of your contacts with Mr. Meese?

Ms. LAVELLE. As I can remember, the Administrator was always there. It was a programmatic report type, overview, and they were not that often, I am quick to point out.

Senator HART. Did Mr. Meese seek those meetings or did you seek him out?

Ms. LAVELLE. That is something I would like to clarify.

When you come back to this wonderful town, it is great. You have to cut off all your friends. I came from industry, I had to cut them off. I don't know what they think. Then my only other social friends were over in the White House, and I was basically forced to cut them off, because any time you talk to somebody in the White House, you are setting monumental policy or undermining your boss.

Anyway, I guess I got on a roller there, but that was kind of a personal sensitivity that has always bothered me that you cannot maintain friendships, you have to act in a new role.

Senator HART. There was never an occasion where you personally talked to Mr. Meese by yourself without the Administrator being there?

Ms. LAVELLE. Senator, maybe once or twice on the phone, or maybe three times on the phone, and it was more a status report on a particular site, and probably because the Administrator was not there, or she sent the inquiry down to me.

Senator HART. Would he call you or would you call him?

Ms. LAVELLE. I would not call him after I became aware of the way things are done. You cannot call anybody over there.

Senator HART. So he called you?

Ms. LAVELLE. Or he had somebody place the call.

Senator HART. But he would want to know what is happening with regard to a particular site.

Ms. LAVELLE. Yes, it was most likely Craig Fuller, he was in charge of EPA for the White House.

Senator HART. And he would say we are interested in what was going on at Love Canal?

Ms. LAVELLE. Right, please keep us aware.

Senator HART. Was there ever an occasion anyone from the White House suggested to you how a particular case ought to be resolved?

Ms. LAVELLE. No, sir, never. They basically looked to the Administrator to run her agency.

Senator HART. But they were interested?

Ms. LAVELLE. Yes, sir, very interested in this program.

Senator HART. And did the fact the counselor to the President took an interest in a particular site make a difference directly or indirectly in how that case was resolved?

Ms. LAVELLE. Not to me.

Senator HART. So the White House interest did not really matter.

Ms. LAVELLE. No, it was just one more person we had to tell what was going on, but no.

Senator HART. The counselor to the President was just one more person?

Ms. LAVELLE. I didn't mean to be flippant, but it was never a directive force in terms of time committed, sources allocated.

Senator HART. So the White House interest would not have the effect of raising an issue higher on the list in terms of its disposition.

Ms. LAVELLE. No, and let me tell you why. If White House interests occurred, it was usually because there was a lot of public interest already, so I would say the driving force was the public interest.

Senator HART. There never was an occasion where the White House would call up and say representatives of "X" industry have asked us to inquire what the disposition of a particular case was?

Ms. LAVELLE. Not that I can recall, that never occurred. I think that would be an inappropriate thing anyway.

Senator HART. I am puzzled by your discussion of the way this town works.

Why do you think it is prohibited for people in agencies to have contact with the administration, or the White House, or what led you to believe that is not appropriate.

Ms. LAVELLE. Since the day I arrived back here, I have been known as California Reagan planner at the Agency. As I told Mr. Meese, it is kind of a millstone more than a star on your halo.

It is very hard to function that way, and there were those in the Agency in review of the last 10 days, even those within the Administrator's office who attributed things I did, policy disagreements I had, in having immediate access to the White House, and their interpretation of what "WH" meant in the memo is indicative of their mentality.

Senator **Hart**. You suggested strongly to Senator Randolph that the word "scapegoat" was not inappropriate.

Why do you think you were fired?

Ms. **Lavelle**. I don't know. The reason cited was a poor reason. The reason I did not even get to discuss, I don't know, but I read the press like everyone else has been reading, and there seems to be a lot of other meetings where people knew weeks before I knew, and I still don't know what those causes are.

I think one should be fired for a breach of ethics or mismanagement, and I felt I was a good manager. I was doing my job, and I always tried to conduct myself in a manner consistent with the public trust placed in me.

Senator **Hart**. When you were dismissed, did Mrs. Burford talk to you directly?

Ms. **Lavelle**. Yes, sir.

Senator **Hart**. What did she say to you?

Ms. **Lavelle**. It is hard to reconstruct it all.

Senator **Hart**. I would think it would be very clear in your mind.

Ms. **Lavelle**. Well——

Senator **Hart**. I don't mean the personal stuff, but what reason?

Ms. **Lavelle**. Basically, she thought I had written this memo, even though I represented to her I had not, it was not even a memo.

She used the phrase "liar," "disloyal to the team."

Senator **Hart**. That "team" phrase keeps popping up in this administration.

Ms. **Lavelle**. And that I was keeping a book on my fellow political appointees.

Senator **Hart**. Were you?

Ms. **Lavelle**. I should have, I think.

Sorry.

Senator **Hart**. It is not too late.

Did you quarrel with her on any of those allegations?

Ms. **Lavelle**. Yes, sir, I tried to, but it was a foregone conclusion and she was not willing to discuss it. In fact she had already told the regional administrator and some members of the media said they already had the press release.

Senator **Hart**. Did she suggest you had not been doing your job?

Ms. **Lavelle**. No, she said she lacked confidence in my ability to do the job based on the fact I was a liar and not a team player and keeping book.

Senator **Hart**. Her testimony over the past 2 years has been replete with reference of the successes of the toxic waste program. How do you reconcile that testimony about the successes and her dismissal of you?

Ms. **Lavelle**. It makes no sense whatsoever, I can't reconcile it, and that is why I refused to resign.

Senator **Hart**. What did she say you lied about?

Ms. **Lavelle**. The memo, that is the only thing cited, the memo which is not a memo.

Senator **Hart**. Thank you, Mr. Chairman.

Senator **Stafford**. Thank you.

Senator Domenici.

Senator Domenici. Thank you, Mr. Chairman.

Do you think this program that you were managing and running for the Federal Government has been a success?

Ms. Lavelle. Yes, sir, I do, and this committee very patiently has let me claim some of these successes, but if I could take 2 seconds I could point it out for the record, because it is important to the employees still there and who want to do a good job and I am worried about them.

When we announced 418 sites in December, action was under way at 250 of the 418 using a number of approaches there. We had 98 sites where we had already completed emergency and surface cleaning, 98 sites. Seventy-one sites we had long-term work under way, that is consistent with the ground water.

We had collected $121 million, which in these private party negotiations at 39 sites, so that is 39 more sites being cleaned up the Agency did not have to clean up.

We also had $3.6 million in cost recovery, and I can go on in RCRA, this committee has been extremely wonderful to work with, and I think if you look at the record, since I came in, we finally have long overdue regulations in place. We have uniform transportation, financial and liabilities, we have incinerator standards, we have issued guidance for the States to come in and take responsibility for their programs which they were seeking, and we were well on the way to issuing permits and getting RCRA ruling which was long overdue.

Senator Domenici. The documents that I was furnished for the hearing indicate that on the Superfund there were 418 priority sites that you have described, but it says the number of priority sites completed, is 5.

Ms. Lavelle. I always like to explain that. The 5 sites—we did not call a site completed until indeed it was completely cleaned up, which includes ground water aquifer.

Senator, these obviously were the worse sites in the country, so they are the most involved. They are very hard to clean up.

Senator Domenici. Which ones?

Ms. Lavelle. Well——

Senator Domenici. All 418?

Ms. Lavelle. Of the 418 sites, 347 have major ground water aquifer problems, and when you deal with those problems, you are looking 22, 33, even 44 months before you can get a clean up if you are lucky, and sometimes with O&M it is longer, that is why there were only 5 total cleanups, but there were a lot more surface cleanups done, as one in West Virginia, and I don't remember any in your district, but these were emergency actions.

Senator Domenici. Let me ask you this; is the program difficult to manage and is the legislation difficult to use?

Ms. Lavelle. The program is a challenge to manage. It called for a lot of innovation. First of all, I don't know if you are aware, Senator, but 86 percent of our money is extramural money. We had 8 percent of the Agency resources in terms of personnel, we had about 36 percent of the Agency money, and we were spending most of that money in the private sector, having them do the engineering and feasibility studies, the technological solutions for the sites. Why did we do that? Because that is where the technology is.

Now a lot of this technology is just not available now, so we have a conscious program trying to involve the private sector.

We also in trying to apply the law, could work with—it is a multimedia approach, we just did not have a water problem, we had water, soil and air problems at these sites

Also it was not just a simple contaminant, we had 120 contaminants in Atlantic City, and the effects are just almost overwhelming.

But I am proud of the management system developed, I think we were well on our way to rolling with this program and it was showing a lot of successes.

Senator **Domenici**. In any event, you assumed that the program is working well, regardless of what others have said, and that you were not fired because you did not manage it correctly, is that what you are telling us?

Ms. **Lavelle**. Yes, sir.

Senator **Domenici**. And it can work well and get the job done if properly managed from what you saw?

Ms. **Lavelle**. Yes, sir.

Senator **Domenici**. You didn't litigate very much. I am not suggesting that is good or bad, I am just asking. Litigation is part of the basic legislation and yet it seems to be used infrequently. Why is that?

Ms. **Lavelle**. Well, I think I am creating a perception here that is inaccurate. The willingness was there to use all the tools, which would include litigation. I guess it is more a question of what the order is. I was pushing to negotiate first, if that fails, then litigate, so it was not in lieu of litigation, it was in conjunction with litigation.

Senator **Domenici**. I understand.

Ms. **Lavelle**. The negotiation, the approach that we were suggesting was getting us results, $121 million, 39 sites, and we frankly were moving along quite well. They were good settlements, and most important, the Swamo is a good example. At Swamo there were about 50,000 drums, 98 silos that were degrading. We had already gone through one winter where we had to remove 10,000 drums with our emergency authorities. The Governor had a problem, he did not have his 10 percent for cleanup which would have been about $3 million. He said, Rita, I am looking at two more winters before I can get you the money before the end of 1984.

Now, if we went, which we did, to negotiation with the responsible parties, we are moving those drums, they started to be removed this past winter on November 10. Why? Because people were willing to talk across the table, be adults and get this site cleaned up and behind us, so I think it was working.

Senator **Domenici**. Thank you, Mr. Chairman.

Senator **Stafford**. Thank you, Senator.

Senator **Humphrey**. You should know that Ms. Lavelle is under oath, we pointed that out at the beginning. The question is are we?

Thank you, Mr. Chairman.

I am sorry that the Superfund operation is getting splattered with mud, because I found in my experience that it is a fine program and well administered. I don't claim to be an expert, but of my own personal experience in dealing with waste dumps in my State, I can't think of another Federal agency that was more cooperative and more willing to move with relative speed. All government agencies are slow, but EPA and the folks dealing in the Superfund program have been very responsive in my experience.

Ms. Lavelle, what are these policy differences and disputes that you refer to in your testimony? Perhaps this has been gone over already, and if so I apologize for not being here before, but can you respond on that briefly?

Ms. LAVELLE. Well, there were some policy differences that were resolved by the Administrator—not necessarily with the Administrator but our program, I think as I said with my testimony was a lightning rod, but it was a very unique program that what air did affect us, what water did affect us, so that we were kind of the clean-up committee rather than standard setting committee, and as such we had a lot of internal discussions on the standards that were being set, are they real world standards, can we even reach them at the various sites, and it was that sort of good healthy intellectual discussion that went on that some may have construed as more than just differences of professional opinions.

Senator HUMPHREY. It is normal to have some level of policy disputes and turbulence, but I am wondering why you sought to bring that out in this important testimony, especially in the same paragraph where you discuss reasons for being fired? Did you have an inordinate number of policy disputes with the Administrator?

Ms. LAVELLE. I don't believe so, but the type of mentality I would think this memo is going to the White House is one that—there was a policy dispute on the ground water, which escalated to the Administrator, and I thought it was a good healthy difference of opinion, and there was a lot of rumoring in the Agency that I had gone to the White House, and that was just 2 months before this scenario occurred, so I kind of see it somewhat supporting the other.

Senator HUMPHREY. So you had some policy differences with the Administrator which escalated, to use your own phraseology. Did you ever escalate these policy differences to the point of going above her?

Ms. LAVELLE. I would never do that, I don't operate that way.

Senator HUMPHREY. I want to address this mismanagement allegation. The Inspector General has found that the accounting for the Superfund expenditures have not been all that he might wish, and have you explained your side of this issue so far this morning?

Ms. LAVELLE. No, sir. First of all I have not seen the report. But certainly, I think it is an accounting problem—a problem that is inherent not only in the Agency but also in Government accounting.

Superfund was a special fund, so we have to account for every dollar we spend and where it goes, I think that would be a nice way to approach all our programs, I would like to have seen it in RCRA.

But there were no internal operating controls. I don't mean to say the Agency was out of financial control, but it was hard to have an immediate charge-back system because there was none in the Agency, it was more of a general pool everybody drew on.

But I have to believe our controller is a professional, and I guess I should not be flippant, but I am so exhausted reading all these details of what I did, next they will think I ran off with the money.

When I came in, that is one of the first things I did—meet with the Inspector General. Dr. Horton is in charge of administration, and together with our controller we now have a system in line, and it is adhered to and we can account for where all the dollars are.

Senator HUMPHREY. I am glad to hear that.

My observation has been that, at least I suspect that there is overcharging on the part of the commercial companies who do the actual cleanup, and it is difficult to get to. It is unreasonable, expensive, and I think it is important—not that I can do anything, but for the record—I think it is important that we have careful accounting of this money. The Inspector General apparently has questioned some $177,000 of expenditures which were charged to Superfund but which he is not certain should have been.

How do you suppose that occurred?

Ms. LAVELLE. Again I have not seen the report, so I think it was internal charges from the various offices, because there was no charge-back system in place. But to address your second point which is a good one, what about cost overruns and using them to upgrade the materials? We did seek controls for that. The Inspector General has 26 positions if I remember correctly, directly charged with the Superfund, and we met on a number of occasions and he was focusing his energy into that.

In your State there is a perfect example at the Nashua site, where the contractor was able to come in $600,000 under contract, and about 6 weeks ahead of schedule. So we were learning, we were about 16 months into the program and we still had a lot to learn.

Senator STAFFORD. Thank you very much, Senator.

Ms. Lavelle, before we start the second round of questions, I think the record should be clear that you have been represented by counsel this morning who are with you at the table. The chair would appreciate it if, for the record, you would indicate to the committee, or your counsel would themselves indicate their names.

Ms. LAVELLE. I failed to do that in the beginning.

Mr. BIERBOWER. James Bierbower.

Mr. BIERBOWER. Mark Bierbower.

Senator STAFFORD. Ms. Lavelle, when we talked in my first round of questions, near the conclusion of them, I think you agreed that the accusations, the leaks, the general turbulence in at least your part of EPA, was having a demoralizing effect on the ability of the agency to carry out its mission.

Ms. LAVELLE. Yes.

Senator STAFFORD. Realizing that you have spent 1 year in the Agency, it would seem to me that certainly you or any other person would have some general feeling for the state of morale in the rest of the Agency.

Could you characterize your perception of the general morale in the Agency?

Ms. **Lavelle**. Generally I think it was good. We all had a mission and all of us were working. I think one indication would be the rate of people leaving, which was very low, so I think they probably liked their jobs.

Senator **Stafford**. Is it possible, before you became a member of the Agency, there were very substantial voluntary and nonvoluntary departures from the civil service employees at the Agency.

Ms. **Lavelle**. Before I came in?

Senator **Stafford**. Yes.

Ms. **Lavelle**. I would not have knowledge of that, I was in California. But my program, no one was leaving, people were trying to get into it.

Senator **Stafford**. One of the aspects of this case which troubles me most is the appearance which your pattern of conduct presents, whether the settlements were fair or unfair, the fact you met so frequently with polluters, and almost never so far as the log indicates, with environmental groups.

That creates a perception that the Agency may be "in bed" with polluters.

Did your colleagues at EPA, Bennett, Togmauter and others, did they meet privately over the dinner tables with the polluters they were supposed to be regulating?

Ms. **Lavelle**. Well, I can't speak for their calendars, but second, I was meeting with people, not with polluters.

One thing I did do last night, I took a xerox of the calendars, and, of course, that only covered the 40 weeks in 1982 for which I was confirmed, and it is kind of interesting, from what I can reconstruct out of that, first of all, it showed I was working too hard. I had less than 5 days off, including Christmas and New Year's and Thanksgiving. I visited for an hour to 2 hours with 45 Members of the House and Senate, problems that they had in their districts.

I met with what I construed to be 33 environmental citizen groups, but they were at the sites, and I look around this table, and I have been in your districts which do have sites. That meant me getting out of Washington and going to the sites and seeking their inputs.

I also did meet with EDF, though not in a consistent manner, because of ex parte.

I met with 25 State directors, or attorney generals. I counted up 41 meetings with representatives of industry, many of which were speeches, most of which were speeches, and then 6 cocktail parties.

I think that shows a pretty balanced report, it shows I was working awfully hard.

Senator **Stafford**. Thank you.

I gather that you and Mrs. Burford differed in your approaches to Agency plans. Would you care to explain your view of proper Agency management, and how that differed from Mrs. Burford's?

Ms. **Lavelle**. Well, I can comment on how I attempted to manage, and she should comment on hers. But we had a large problem to solve, a lot of hazardous waste sites, they didn't even know that the universe was.

Additionally, we didn't have regulations on the other end.

Again, I had about 7 percent of the Agency resources in total. They are highly qualified, very experienced managers, but undirected.

We made a couple of decisions in the beginning. First of all, it would be a very open management style, wherein managers would be responsible for commitments that they made against the plans, and this plan and exercise we initiated the 5 weeks after I was confirmed. It was a very exciting approach, it was an approach that allowed a manager to be a manager, to use all of the intellectual gifts that they have to solve the problems.

I think that the starting of the rumors and the leaking of these internal working documents to reach policy decisions undermined our whole approach, and it is particularly devastating to the types of individuals that we had in our program.

We needed that freedom to be able to express every possible scenario. We don't have that freedom anymore. As I was leaving the scenario most of the managers would have talking points, briefing papers prepared by staff, and you could say what you wanted, what you anticipated, we had as many as 15 or 20 engineering solutions and suggestions for every site cleanup, and you had to allow this type of freedom.

It has been severely curtailed. You don't write anything down anymore. It is terribly unhealthy, and I think it is conducive to a very demoralizing situation right now.

Senator STAFFORD. When Mrs. Burford asked for your resignation and you refused to give it, did you appeal then to any member of the White House staff?

Ms. LAVELLE. Yes, I did.

Senator STAFFORD. Tell us who.

Ms. LAVELLE. As I returned to my office, I immediately started calling Mr. Meese, who did not get back to me until Saturday morning, as did Mr. Baker, on Saturday morning.

Senator STAFFORD. Did any of that reference to Mr. Meese cause any change in your status?

Mr. LAVELLE. No. Mr. Meese has a good attitude, he believes the Administrator should be able to run her agency, and I agree with it, only I don't like it, but I do understand it. And I was led to believe on Monday I could come in and discuss it with Helen Von Dam. On Monday I got an ultimatum, either turn in your resignation papers or you will be fired, and I was fired.

Senator STAFFORD. My final question, for the moment, it has been alleged a settlement of the site in California is delayed to avoid helping the Governor in his Senate campaign.

Ms. LAVELLE. I was accused at the point where the announcement was supposed to be made, so that is more of an appropriate question for Mrs. Burford. I was aware the the money was to be obligated in about July 27, because I was trying to hit that 1982 budget target you gave me.

Senator STAFFORD. Indicate when the announcement was supposed to have been made?

Ms. LAVELLE. July 27.

Senator STAFFORD. When was it actually made?

Ms. LAVELLE. It has not yet been made.

Senator STAFFORD. Thank you, that runs out my time.

Senator Randolph?

Senator **Randolph**. In discussing with Senator Hart some sites where work was being done, you put a question mark on a project in West Virginia.

Ms. **Lavelle**. Yes.

Senator **Randolph**. I will clarify that, and I am sure we both would want to do so.

It is a project that has been completed, it was an emergency, it had to deal and did deal with a small chemical plant located on waters that ultimately flow to the Ohio River, and so that the record is complete.

Ms. **Lavelle**. Thank you.

Senator **Randolph**. Now, then, there have been suggestions, Ms. Lavelle, that your approach in negotiating settlements with chemical companies, rather than taking them to court, to use that expression, has resulted in sweetheart settlements. We have heard that over and over.

When a settlement is a sweetheart deal, that is the subject of differing interpretations. The ability to both negotiate and sue gives you two possible approaches, is that correct?

Ms. **Lavelle**. At least two, yes.

Senator **Randolph**. Is it possible that your reluctance to sue gave a signal to companies that they could obtain more favorable settlement through negotiation than in the courts?

Ms. **Lavelle**. First of all, I was not reluctant to sue, and I think I have got to clarify this.

I looked at it as a management problem. I had 418 sites to cleanup. I had a number of tools. What is the best tool to get the quickest, most environmentally sound cleanup, and I would make that decision, and then we would go.

Let's go to Swamo, which is one of the sweetheart deals. I already explained to Senator Domenici what the situation was, but the sweetheart deal there was surface cleanup that is underway for $7.7 million in cash, plus bonding that takes up to $15 million.

But what did we settle for? We settled for a cleanup against a stipulated timeframe, and stipulated type of technology. There are penalties in that agreement if you don't meet that timeframe, if you don't use a RCRA permit facility, then these companies are all liable, they were responsible for a portion of the work, that portion of work represented 50 percent of the cost, as we estimated it.

The ground water problem was the next problem. That—I have no notes on that, but to the best of my recollection, Swamo was about 350 responsible parties. About 24 came in, 50 percent of the volume and 50 percent of the financial responsibility.

Then we had the ground water problem, and as I remember about 113 parties came in for another $3.4 million for the ground water problem, and when I left, I said: Let's sue the rest of them. We have given them two chances to come in. They don't want to settle, and, as Senator Chafee said, they were not drags, they were big corporations with a lot of assets, so I was willing to sue when we had to, but I just thought in order to get environmental cleanup, what is the best way to go, the way that gets it the quickest, and negotiations seem the best approach, not in lieu of litigation, maybe in conjunction with litigation, but that is the way I was trying to manage it.

Senator RANDOLPH. I remember listening to my father, who was a trial lawyer, a practicing attorney, and after he would come back from Clarksburg, W.Va., where his main office was, during the day, and then after supper in our home, he would go to his office a block away. Many, many times I sat quietly, as a boy listening to his advice. He was a lawyer, but he said: I think it is best not to sue. I think you can talk matters over. I advise you to try again before you come back to me.

Are you saying that was your feeling perhaps in some of these matters?

Ms. LAVELLE. Yes, and I think it is a commentary where American society today, and even Supreme Court Justice Burger says courts are backed up. Look at Love Canal 4 years later, and we don't have a court date. So I did not think it was the best way to go.

Senator RANDOLPH. Thank you very much.

Now this further question:

You met with our staff, isn't that correct? Not Democrats or Republicans, but the staff of this committee?

Ms. LAVELLE. Yes, sir.

Senator RANDOLPH. These are knowledgeable people, not out to get someone, or to sustain a position of someone. They raise matters that they feel are of concern to all members of the committee.

Now, if this is a statement that you made, or did not make, perhaps you can clarify it.

Recently, in talking with members of our staff, you supposedly said, "steer clear of Jim Sanderson." You went on to say that he represented a number of clients, and that he was bad news.

Now do you know anything about this?

Ms. LAVELLE. I don't remember those—I am not trying to say I didn't say that to the staff. I think the question was put to me, did I have any dealings with Sanderson, and the answer was, no, I did not, and that I thought he was rather indiscreet, and that is probably what they were picking up on, in terms of his representing clients at the same time he was trying to seek nomination for a position within the Agency, and I did say that I steer clear of him, I had nothing to do with him on a professional basis.

Senator RANDOLPH. This may be a good question.

You and the Administrator said the Superfund program is only 15 months old. The law was passed over 2 years ago, and much preparation went into the making of the law before that time.

Do you have any comments?

Ms. LAVELLE. You mean as to why the time discrepancy?

Senator RANDOLPH. Yes.

Ms. LAVELLE. We cite the Executive order given to us in August, the fact that EPA would be responsible for implementation, so that is how you probably account for it.

Senator RANDOLPH. This final question:

Do you believe, Ms. Lavelle, that you have done a good job, that you should be on the job, rather than to have been dismissed from the job?

Ms. LAVELLE. Yes, I do.

Senator **Randolph**. Is that why you are here today?

Ms. **Lavelle**. Yes.

Senator **Randolph**. To testify as to your accountancy of that job?

Ms. **Lavelle**. Yes, I think I was a good manager trying to do the best I could, and I don't understand this.

Senator **Randolph**. You are comfortable with your testimony?

Ms. **Lavelle**. Yes.

Senator **Randolph**. Do you believe it?

Ms. **Lavelle**. Yes, sir, I wrote it.

Senator **Randolph**. I have been asked by Senator Moynihan to submit these questions to you and to ask that you respond to them in writing for the record. Is that agreeable?

Ms. **Lavelle**. Yes, sir.

Senator **Stafford**. I think the Chair at this point would not only place that in the record, but reserve the right to other members of the committee to submit questions in writing for responses in writing.

Is there an objection to that?

Ms. **Lavelle**. No, sir.

Senator **Randolph**. Thank you, Mr. Chairman.

[Senator Moynihan's questions follow:]

QUESTIONS FROM SENATOR MOYNIHAN FOR RITA LAVELLE RE STRINGFELLOW ACID PITS SITE

Ms. Lavelle, is it correct that you were employed at Aerojet Liquid Rocket Company, a subsidiary of Aerojet-General, unitl November 1981, at which time you were hired as a consultant to the Envionmental Protection Agency and later appointed EPA Assistant Administrator for Solid Waste and Emergency Response?

While you were employed at Aerojet did you know that the company had been involved in dumping hazardous wastes at the Stringfellow site?

If not, when did you become aware that Aerojet was involved with dumping waste at the Stringfellow site?

On March 23, 1982, the day of your confirmation hearing before this Committee, your appointments calendar indicates that you met at 2:00 p.m. with Administrator Gorsuch and then California Attorney General George Deukmejian. Did this meeting occur? Was there any discussion of the Stringfellow site?

On May 28, 1982 your appointments calendar indicates that you attended a briefing on the Stringfellow site, to be conducted by "Gene and Russ Weyer staff". Did you attend such a briefing? Was Aerojet's involvement in the Stringfellow dumping discussed? What was discussed at the briefing?

On October 20, 1982 you received a copy of an audit report from the Inspector General that deals specifically with a review of a draft cooperative agreement between EPA and the State of California to provide Superfund monies for the clean-up of the Stringfellow site. Do you remember seeing this report? The Inspector General asked for a response from you to recomendations made in the report. Did you prepare such a response? If you did not, did you direct anyone in your office to prepare a response?

The October 20th Inspector General's report concludes that $437,958 paid to certian companies (Chancellor-Ogden and I.T. Corporation) to haul away material from the Stringfellow site should not be included as an eligible Superfund expense when a final cooperative agreement is signed for the clean-up of the site. The Inspector General disallowed these expenditures because the companies in question had been identified as being among those who originally dumped hazardous materials at the Stringfellow site and thus potentially liable, under the Superfund law, to pay all or part of the site clean-up costs. Are you familiar with this issue? In discussions with the State of California over the draft cooperative agreement did you or anyone on your staff raise concerns about paying potentially liable parties to clean up the site?

[As of the date of publication of this hearing, responses to the above questions were not received.]

Senator **Stafford**. Senator Chafee.

Senator CHAFEE. Ms. Lavelle, I have two series of questions.

The first, it seems to me from the description you have given of the enforcement situation within your particular division at the agency, that it sounds to me somewhat chaotic. I don't wish to be unfair, but at first you portrayed yourself as merely a saleswoman who went out with the offenders and urged them to go toward negotiations, and then the details were picked up by the legal end of the agency, either in the General Counsel's Office or in the regional office somewhere.

At the same time, it seems you have indicated that you were close to the settlements, that you knew about it, that you were the one that said, let's settle this situation rather than going into a long lengthy trial.

Now, would you please describe to me briefly, because I have another series of questions, just how the enforcement part of your particular division worked?

Did you ever sit down around a table with a regional lawyer, with the General Counsel, with the Justice Department and say, look, here are the pros and cons. We don't have a chance in proceeding this way, but this other way we do have a chance.

Would that take place?

Ms. LAVELLE. Yes, sir, a number of those discussions took place, but I want to clarify that it is mostly them coming to me with options, the options were not top down driven.

They came to me with a number of options, and we would arrive at the approach we are going to take.

Senator CHAFEE. It is also fair to say that your original testimony seemed to indicate that you were just a saleswoman out having dinner with these people, and, indeed, we can call them polluters. You object to that, but they are polluting companies, and you might have had dinner or lunch with these groups and your knowledge certainly went beyond an average person trying to persuade them to enter the negotiating process. You must have been familiar with the details, with how many drums there were, what the water levels probably were, the aquifer.

Ms. LAVELLE. I was very much aware. Maybe I can clarify for you.

The missionary part of my role, I felt, was with the CDO at that level, because in order to encourage companies to come and negotiate, it did take a sales job. It required risk taking on the part of the companies that had traditionally involved themselves in a confrontational mode, hiring a number of attorneys and law firms to conduct this.

Obviously—I guess it comes down to what you want to believe of people, and I am here to tell you that I would never assume to discuss any details or approach that was going on.

I was conscious of ex parte situations when they occurred, as were the people on the other side of the table.

Now they had been around for a long time in this business and know a lot more than I did in terms of how one should conduct themselves.

I am telling you it did not occur, there was nothing of an ethical violation that occurred.

Senator Chafee. I just want to say on the part of one Senator anyway, I believe these meetings were extremely indiscreet, and the effect of those meetings to the public, to the Senate, to the world at large is unfavorable. I would not want you to go out of here believing that we, at least this Senator, accepted the judgment that there was no harm in such meetings, regardless of whether they are ex parte.

I think it was a mistake, a serious mistake you made.

Now, I would like to move to Mr. Sanderson, because his name keeps coming up.

The difficulty, it seems to me, with the settlement in Indiana, was not the Swamo settlement. That had the approval of the district judge, and I believe that is applicable.

As far as I am concerned, that is satisfactory. We have great respect for Federal district judges here, past and present.

But the difficulty was the relationship with Mr. Sanderson. Why did Mr. Sanderson and his chemical waste management company, which he represented, get the contract?

Was that out for bid?

Ms. Lavelle. OK, the 24 companies that were assuming responsibility for cleanup of the surface chose their own contractor. The way they did it was their business. We felt that it was our responsibility to insure that the cleanup would be consistent with sound environmental practices and disposal, transportation as proposed under RCRA, so the way they chose their contractor was their business.

Senator Chafee. So Mr. Sanderson was not working for the U.S. Government, but for these 24 companies.

Ms. Lavelle. Now wait a minute.

Senator Chafee. Who signed the contract?

Ms. Lavelle. The contract was—I don't have my notes—the contract was signed with the 24 generators. They in turn signed with us under consent orders for a stipulated cleanup.

Now, let me make two points here.

First of all, I never saw Mr. Sanderson at all in this time under a clean waste management act. He would have to speak for himself what he was doing, if anything, and I had no reason to believe Mr. Sanderson was actively involved.

Second, we were aware of the problem or potential problem, another subsidiary, and for that reason, I did not accept the $7.7 million cash-out. I made them put the bonding in. I stipulated a very tight approach in terms of deadlines, engineering specs, and transportation of the facility.

Senator Chafee. Mr. Sanderson's tentacles seem to reach deep here, and I go back to the lifting of the land fill regulations which took place, not when you were confirmed in August, but when you were there as a consultant.

That was a horrendous error, or maybe even stronger words. The regulations were lifted on February 18 and then restored a month later.

I understand Mr. Sanderson's chemical waste management company had their trucks backed up to the site to dump waste as soon as the regulations were lifted on February 18, and then just proceeded to dump the worst type of liquids; is that correct?

Ms. LAVELLE. I don't have firsthand knowledge of the truck scenario.

Senator CHAFEE. Is it true that waste management trucks dumped in the site in that interim period when that ban was lifted?

Ms. LAVELLE. I read they did, but I have not seen a report on that.

Senator CHAFEE. Was the lifting of that ban discussed with you as the potential appointee to head RCRA and the emergency management?

Ms. LAVELLE. Yes, sir, and I was involved in a number of meetings trying to get that whole situation handled.

I saw it as not a technical foulup in terms of the agency always pushing for a deminimis amount of liquids in land fill.

It was an administrative law foulup in that we created a window by not getting the regulation in place when it should have been.

Senator CHAFEE. But it came as no surprise that a window was created. It was not necessary. It was your agency, you and others involved, apparently underestimating the public reaction, but as far as permitting the offense to take place, namely the dumping in that month's period, apparently had your concurrence, is that true?

Ms. LAVELLE. I was consulted at that point. I was not able to differ policy—I am not trying to avoid the situation, I am just trying to say I had no ability to take such reaction at all.

Senator CHAFEE. But the important point is not reaction, but is it the right thing to do?

Ms. LAVELLE. Correct.

Senator CHAFEE. And it is clearly the wrong thing to do.

Ms. LAVELLE. I only reviewed it from the de minimis considerations, I did not understand a window would have been created because of the fact the regulation was not out when it should have been out, and all I can say is that I learned it from that, and when I was confirmed, one of the first things I did was get regulatory schedule in place so I knew when this type of scenario might occur again.

In fact, Senator, I would like to point out, I was instrumental in denying the Phase 1 application in California, because they were allowing liquids in land fills, and I said this just will not go, and I turned down their application.

Senator CHAFEE. Was Mr. Sanderson involved in the decision to lift the ban on February 18?

Ms. LAVELLE. I have gone back and tried to reconstruct that. He definitely was in some of the meetings.

Senator CHAFEE. He was?

Ms. LAVELLE. But I would much rather Mr. Sanderson talk on that, because that is to the best of what I can see from the calendars.

I want to point out, though, that my dealing with Mr. Sanderson at the time was that he would leave meetings when he appeared he was in conflict of an interesting situation. So I cannot report to you whether he was there making those decisions or not.

Senator CHAFEE. Is it a situation that Mr. Sanderson was a consultant in the agency and recognized by you and others as a consultant on the payroll of the U.S. Government, participating in decisions which, where he clearly had a conflict and then would excuse himself from what seemed to be the conflicting portions of the meetings and then come back.

Is that the way it worked? You indicated that was so.

Ms. LAVELLE. I am trying to reconstruct something that happened many months ago. All I can say he was in meetings, I do not know who he would have had a conflict of interest with. I don't know if he was in the room when he was representing clients. I think that would be more appropriate for him to answer and the Administrator, because I only had one percent or one company I had to recuse myself from.

Senator CHAFEE. Thank you.

Senator STAFFORD. Senator Mitchell.

Senator MITCHELL. As I indicated earlier, I have many more questions to ask which will take quite a bit longer than 10 minutes, Senator Baucus has only a few, so I will defer to him because he has another engagement to go to and then I will resume.

Senator STAFFORD. The chair recognizes Senator Baucus.

Senator BAUCUS. Thank you.

Ms. Lavelle, I don't want you to have the impression that we condone the appearance of impropriety by not addressing this issue, but I must tell you, based on what I have heard thus far, it seems to me that probably hindsight is better than foresight, it would have been better if you had spent more time speaking not only with industry representatives, but also spend more time with the environmentalists and other people interested in the action you might take. For the sake of appearances and also because you might learn something.

It seems to me all of us in public office have that responsibility, many of us do know we are doing the right thing, but that is not enough. We have to also be very sensitive of appearance of impropriety, and to meet with various other groups. With Mr. Sanderson's problem, it would be much better if you had done that. So I just caution you in the future and hope you will take that to heart.

The question I have of you is, on your earlier statement you said the problem of EPA is nonmanagement, not mismanagement. What do you mean by that?

Ms. LAVELLE. That there is no strong cohesive mananagement from the top. The program offices operate satellites independently, and I think, from my current review of that, they are pretty strongly managed.

Senator BAUCUS. When you say no strong management at the top, you mean from the Administrator?

Ms. LAVELLE. I say no strong management from the top.

Senator BAUCUS. Who is the top, the Administrator?

Ms. LAVELLE. Well, she is the person in charge.

Senator BAUCUS. Do you include anybody else at the top?

Ms. LAVELLE. Well, all of her staff offices.

Ms. BAUCUS. People within her office?

Ms. LAVELLE. Yes.

Ms. BAUCUS. You say no strong management; is that because of incompetence?

Ms. **Lavelle**. No, I think we all have strengths and weaknesses and blind spots, and——

Senator **Baucus**. What would their weaknesses be?

Ms. **Lavelle**. None of them are managers.

Senator **Baucus**. So it is a matter of inexperience?

Ms. **Lavelle**. Yes, and insensitivity, strong management direct from the top.

Senator **Baucus**. Insensitivity to——

Ms. **Lavelle** [continuing]. The need.

In other words, if you have never in your life worked as a manager or worked in a company as a manager—and I don't mean to insult, but as a lawyer-politician with an excellent background, but not necessarily a manager.

Senator **Baucus**. So you are suggesting that because of inexperience, Mrs. Burford is not sensitive to the need to have a rigorous strong management?

Ms. **Lavelle**. Nor are they sensitive enough to how hard it is to manage a program effectively.

Senator **Baucus**. Are there any other problems that come to mind?

Ms. **Lavelle**. Well, I really saw no abuse—I have heard these charges of politics, but I think there was too much willingness to listen to rumor, to let the press strive—

Senator **Baucus**. On the part of the Administrator, and her people to listen to rumor?

Ms. **Lavelle**. Yes, and to encourage rumors.

Senator **Baucus**. What did you mean by that? What rumors did she encourage?

Ms. **Lavelle**. She will have to talk to you on that. Obviously if she accepted carte blanche something this spurious that I wrote a memo to the White House, she has been listening to a lot of rumors.

I had people on my staff good in public affairs, and I was trying to get them into the whole Outreach program in the Superfund, and the charge to me was: You are running your own public affairs unit. You are running your own Congressional Affairs unit, rather than having a consensus.

Senator **Baucus**. Did that occur in other offices?

Ms. **Lavelle**. They call them other things, I was stupid enough to call them that, they call them staff stands—well, enough said. In retrospect, I should have been more sensitive, maybe I would still have the job.

Senator **Baucus**. You say the Administrator was inexperienced. Is there any other area, speaking constructively?

Ms. **Lavelle**. It was a reaction—maybe recording more of the statement as to where is the Agency going, where is the long-term and short-term objectives. This would result in some input into legislation, and I think there is a lot of pluses to be gained out of all this.

If we take the principal that we are going to try to turn some of these programs over to the States, then how are we going to get from A to B? That should be spelled out more.

Senator **Baucus**. Did you disagree with any significant policy decisions that affected your jurisdiction?

Ms. LAVELLE. No.

Senator BAUCUS. You did not disagree with any policy statement made at the top?

Ms. LAVELLE. You mean the function of my office?

Senator BAUCUS. Did you disagree with any decisions the Administrator made that affected your office?

Ms. LAVELLE. No, usually by the time the Administrator reached me, I was in agreement.

Senator BAUCUS. I missed what you said.

Ms. LAVELLE. Usually by the time—it was an ongoing process.

Senator BAUCUS. Are you saying you agreed with everything she said?

Ms. LAVELLE. Well, no.

Senator BAUCUS. Where did you disagree?

Ms. LAVELLE. For instance, I did not agree with the way we handled the congressional paper situation.

Senator BAUCUS. The shredders?

Ms. LAVELLE. No. I thought that there had to be a way to turn over to Congress, that they were adult and would not show—that there had to be an approach to work this out, rather than a confrontation. I disagreed, and I was overruled, and that is why we all have bosses. But I did not go beyond that once I was given a direct order.

Senator BAUCUS. Besides better management at the top, what other suggestions do you have for improvement with respect to EPA's credibility?

Ms. LAVELLE. Well, I think it is still too reactive in terms of people making these outrageous charges, mostly relating to motivation, and we are always in a responsive mode, rather than being out there and explaining where we are going, and why we are going there, and how we are going to get there, in anticipating the questions, we are always in a mode of responding to the grenades after they were launched, so maybe——

Senator BAUCUS. I am glad to hear that problem does not only occur on the Hill.

Ms. LAVELLE. It is sad because we are dealing with—especially my program—what about the psychological trauma to the citizens when they get this bad information in terms of what is occurring out there?

Senator BAUCUS. That sounds like it is not strong enough management.

Ms. LAVELLE. Yes.

Senator BAUCUS. Did you agree with the decision to cut the budget roughly one-third in the last 3 years?

Ms. LAVELLE. In my program there was no cut, the hazardous waste program——

Senator BAUCUS. I am speaking generally, do you think it was good to cut the budget one-third in 2 years?

Ms. LAVELLE. It seemed to me a lot of the programs should be more properly run at the State level, by putting money into the States.

Senator BAUCUS. So you do agree with these cuts?

Senator STAFFORD. Ms. Lavelle, you have been on the stand a long time. The chair would like to run to about 1:15 and break until 2. Is that running too long?

Senator Mitchell, would you defer to me before we give you the floor?

Senator MITCHELL. Certainly.

Senator STAFFORD. Ms. Lavelle, you said earlier in testimony that you did not make the liquids in landfill decision? Was it made on the floor?

Ms. LAVELLE. Yes.

Senator STAFFORD. Do you know if Mr. Sanderson was located on the 12th floor at EPA Headquarters at that time?

Ms. LAVELLE. Yes, sir, he was.

Senator STAFFORD. Do you know if he was Mrs. Burford's choice as No. 3 person?

Ms. LAVELLE. Yes, sir.

Senator STAFFORD. Do you know if he participated in major decisions?

Ms. LAVELLE. Yes, sir, he was in major decisions in the role of the consultant.

Senator STAFFORD. Do you consider liquids in landfills a major problem?

Ms. LAVELLE. Certainly.

Senator STAFFORD. Earlier I asked if your coequals met with members of industry that the Agency was expected to regulate. I recognize that you are not the keeper of the calendars of coequals of yours at EPA, but you must have some awareness of their general attitudes and their duties. On that basis, I have inquired of you, if, among the political appointees at EPA, and others of your coequals, did have lunch and dinners with representatives of the interests they were supposed to be regulating?

Ms. LAVELLE. Well, I assume they did, and sometimes I know they did. But I think it is more the philosophy you have, and we all tried to conduct ourselves in an open manner consistent with the public trust that was given to us. And I guess it is just—I did not get to tell Senator Baucus, I got off my behind and told the sites, and actively sought, and what I am saying is that, your perception—I am proud to say I met with industry, I met with a lot of members of this committee, and the House as well, and I will stand behind my record, and I think meeting with industry, we are all human beings trying to protect the environment. That approach that industry is all bad and Government is all good was laid to rest with Watergate.

Senator STAFFORD. Thank you very much.

I really am back where I began, and that is one of my basic concerns, the ability of the Agency to carry out its many duties under the various programs.

I call your attention to a meeting you had with members of the committee staff on Monday morning.

Ms. LAVELLE. Yes, sir.

Senator STAFFORD. In that meeting, some of the statements you made to the staff, I am told, were these—we never had staff meetings, there was no Agency commission—and finally, there is no management on the 12th floor.

Did you make those statements in substance?

Ms. LAVELLE. In substance, not in quote, unquote.

Senator STAFFORD. And you stand behind them?

Ms. LAVELLE. Yes, sir.

Senator STAFFORD. In that event, it would appear to me that more than just the division of EPA that you operated may have some considerable management and morale problems, would I be correct in that?

Ms. LAVELLE. I really don't have firsthand knowledge. I'm not trying to avoid the question. I dealt with my question, I was busy enough there.

Senator STAFFORD. I am trying to get your opinion, an evaluation of the Agency.

Ms. LAVELLE. I think the esprit de corps was good. What I am trying to say, that senior managers, we never had staff meetings, or if we did, the few we did have, they were sporadic and there was more of a report on action, accomplisments, rather than an exchange.

There were a lot of things we could have learned together. Our Hill relations, our budget process, there were good critical skills, a person or employee within the Agency that had experience that could have been cross-fertilized and all, that did not occur just because we were never brought together and managed, basically.

Senator STAFFORD. That comes back to your earlier statement, that in your judgment, it was relatively weak management at the top; is that correct?

Ms. LAVELLE. I think it was a vacuum, rather than conscious mismanagement.

Senator STAFFORD. Thank you.

Senator Mitchell.

Senator MITCHELL. Ms. Lavelle, I want to begin by commenting on your exchange with Mr. Baucus regarding the budget. You suggested, in response to his question regarding a one-third cut in EPA, that you think that some of the other programs could be best handled by returning responsibilities to the States.

You recall saying that?

Ms. LAVELLE. Yes.

Senator MITCHELL. You are aware, are you not, the very same budget proposed drastic reductions in grants to the States by the Federal Government? Are you aware of that?

Ms. LAVELLE. Yes, sir.

Senator MITCHELL. So you feel the States could best handle these responsibilities even though the same budget proposed drastic reductions?

Ms. LAVELLE. Yes.

Senator MITCHELL. And you are aware of the States' difficulty in obtaining funds, because you testified about the State of Indiana not coming up with the matching funds and that prompted you to take the action you did at that site.

Ms. LAVELLE. Yes, sir, I have firsthand knowledge of the problems of the State.

Senator MITCHELL. I submit to you——

Ms. LAVELLE. I would like to say that a cursory review of the other grant programs—my programs were about the same in hazardous waste in trying to turn over a new program to them. But some of these other programs, the fact might support that the program is already being run, and that this transition is already occurring, so perhaps the granting mechanism is not the appropriate vehicle, just given more of their authority.

Senator MITCHELL. I would submit to you this is not the place for this discussion. We have already had budget hearings. But indeed harsher words might apply, that we return responsibilities to the State and at the same time, to propose drastic funding cuts to the States. Is that analogous, and to propose a 55 percent reduction in the research budget. The two statements simply don't square, and they are part of the reason why so many people are deeply concerned about the direction that EPA has taken.

I would like to get into the area Senator Chafee raised in response to your statement which seems to imply there are only two routes to take. There is a third alternative, and the Superfund law you administered authorized you, did it not, for immediate cleanup action, and then to bring suit against the parties there.

Ms. LAVELLE. Yes, but it was constrained by 10 percent.

Senator MITCHELL. Only if the action is remedial.

Ms. LAVELLE. Yes.

Senator MITCHELL. And there is no such 10 percent restraint.

Ms. LAVELLE. If it is an emergency response, no.

Senator MITCHELL. Now, you stressed repeatedly your selling to industry or attempting to persuade them to negotiate instead of litigate?

Ms. LAVELLE. Yes.

Senator MITCHELL. And you emphasized the risk they take by litigating instead of negotiating?

I want to point out to you that 3 years ago we discussed at great length in this committee, the Superfund legislation, and it was created because of the recognition of a separate area dealing with compensation that the current legal process does not afford appropriate response, it does take time, it can be used to delay up to 5 or 10 years; and it is one of the reasons Superfund was created, that to permit Government an opportunity to take action in areas such as hazardous waste where it does not lend itself to remedial action, because of the danger, the uncertainty.

Times Beach is a good example; it does not lend itself to a 5-year lawsuit, and I submit to you further that it is frankly naive and a little bit ridiculous to suggest that the Dow Chemical Corp., or Monsanto, or Stauffer, or any of these other chemical corporate decisions were made to negotiate as opposed to litigate on the basis of persuasion by you or anyone else; these decisions are made in the best interest of the organizations.

Ms. LAVELLE. That is right.

Senator MITCHELL. And they face the same risk from refusing to join immediate actions and subject themselves to cleanup and litigation. If it costs $2 million to clean something up and the company is responsible, they face the risk of paying $6 million if they refuse to act.

Ms. LAVELLE. That is right.

Senator MITCHELL. And the fact of the matter is that it is the reason why this law exists and it does not exist as a basis for you or anyone else to go around persuading, there are decisions you must know are not based upon the persuasiveness on your part, but on their own calculations of their benefits, and litigation costs accruing to them as well, as to the Government; and the potential dangers and damages hang over them like a club that could be utilized. I submit to you that what I regard as the inordinate emphasis on getting people to negotiate simply created the impression and did not make use of the law in the manner intended.

That is a matter of subjective thinking, I understand that, and you have made a very spirited defense here, but I want you to know that you can get a lot more sometimes by taking actions other than that, and a delay in the type of——

Ms. LAVELLE. May I say something here. Senator, you just made the best argument that can be made in persuading. I'm not naive enough to assume that my charm over a lunch table will convince a corporate executive to approach the negotiation table.

Senator MITCHELL. My point is that they had highly priced attorneys well aware of the law and the risk. What was needed frankly——

Ms. LAVELLE. Let me put something on the record here——

Senator MITCHELL. Let me finish and you can say anything you want. What is needed is not a lot of luncheons and dinners, but a vigorous pursuit of the cleanup of the hazardous waste sites which is what this law was intended to accomplish, which I and many others think has not been accomplished with the speed it could have been because of the manner in which it was handled.

Ms. LAVELLE. Senator, I understand your approach, in fact that is the argument I made with a lot of these people, because that is the only argument they understand. But the approach was not as simplistic, only to negotiate. Again, I return to which sites we were going to use which approach—let me point out that even though Superfund was on the books, a lot of these cases are extremely weak. We don't have the proof, and I think that Congress is going to see a lot of that when they examine the records.

Senator MITCHELL. You don't have the proof that a particular company was responsible?

Ms. LAVELLE. Yes, sir.

Senator MITCHELL. But you know a site is there requiring cleanup, and in part, the creation of the Superfund itself created by a fee imposed on the manufacturers of the raw materials which became hazardous waste was to permit prompt action, and if in fact a cleanup occurs as it should and the Government is then unable to assign responsibility, the Superfund is replenished through the fee.

That is the point of it, it is primarily a cleanup mechanism, it is a mechanism designed to give the Government the only instruction in our society that can deal with this massive nationwide problem, the opportunity to take those steps, it is not primarily designed to assign liability to company A, company B, or company C. That is a part of it, but not the primary responsibility, it seems you have got the cart before the horse.

Ms. LAVELLE. The mode here was to get site cleanup, the way to do it, there were a number of ways; one, just go spend the money and recoup it later. That is a good scenario.

Senator **Mitchell**. In how many cases?

Ms. **Lavelle**. Ninety-eight, we had surface cases. This year we are going for $17 million cost recovery. But there I was, senior manager responsible for this program, given *x* amount of resources, and given an assignment to clean up 418 sites, and I sat there and we worked as management teams to figure out which approach, such as negotiation, litigation, or a consent order—which approach would get us the best results.

So that is why we think we are managing well, we still have a lot to learn, but we were getting cleanup.

Senator **Stafford**. Could I interrupt here?

Senator **Chafee**. We said we would go to 1:15. I'm prepared to go straight through rather than come back at 2 o'clock, because I think we have other commitments. The question is, is that satisfactory? I know it has been quite an ordeal for the people at the table. If you are prepared to stick it out for another 20 minutes.

Senator **Mitchell**. I won't estimate my time, I have many questions. I can't tell you how long it will take.

Ms. **Lavelle**. It's fine with me. I'd rather get this over.

Senator **Chafee**. Senator Mitchell, why don't you proceed?

Senator **Mitchell**. There has been discussion about your meetings with Agency representatives, you began on page 7 where you said and I quote, about the bottom third of the page:

> The many meetings as recorded in my calendars are consistent with my purpose of strategy for negotiating agreements with industry to get the worst toxic waste sites cleaned up.

Have I read your statement accurately?

Ms. **Lavelle**. Yes, sir.

Senator **Mitchell**. So that in your mind, according to your statement, the meetings with industry were negotiated settlement, part of the strategy to negotiate settlements with industry; is that correct?

Ms. **Lavelle**. No, sir.

Senator **Mitchell**. What does this mean then, when it says it is fully consistent with it?

Ms. **Lavelle**. First of all that is not the only reason for that, but——

Senator **Mitchell**. That is the first reason assigned by you.

Ms. **Lavelle**. Exactly. I basically saw myself as the senior manager for this program. As such, I thought it was extremely important to get out the philosophy with which the program would be run, to those companies most affected by how the program was going to be run.

Senator **Mitchell**. Let me interrupt you here, your meetings were with the companies most affected by the way the program would be run.

Ms. **Lavelle**. They were very affected, that is probably a better choice of words.

Senator **Mitchell**. So it was not incidental, it was a deliberate constant part of your strategy to meet with those you were responsible for?

Ms. **Lavelle**. Yes, sir.

Senator **Mitchell**. Continue.

Ms. LAVELLE. I looked at the sites, I thought how we would get cleanup. There are a lot of companies that could, and should, and would initiate their own cleanup. Given the fact that there was a willingness from the Agency to work with them in determining exactly how this cleanup will occur and that it will occur, rather than litigating. If you think about it, the traditional adversarial approach is what we walked into, and I am not trying to say I completely abandoned that approach, I am trying to say in order to clean, to get site cleanup.

So basically yes, I was trying to get a conscious commitment from management to be willing to enter negotiation and come to the table, and it was not, as you well pointed out, this was based on a commitment that we were going to litigate and go for triple damages, but we are all here to get environmental cleanup, and it does no one no good to leave these sites abandoned.

Perhaps, Mr. Chairman, it is because I came with a company that had assumed their community responsibilities with no Government expenditures as far as I knew, of money, and we are cleaning up a situation.

Senator MITCHELL. When you say it is consistent with your purpose, you are now saying you sought out those companies who were most likely to be subject to the law which you were to administer in an effort to persuade them to enter into negotiations?

Ms. LAVELLE. Yes, sir.

Senator MITCHELL. So there is no misunderstanding, I think it should be made clear, we are talking about two separate regulations or codes of conduct here, are we not. You have referred to ex parte communication, indicating your awareness of a prohibition or a warning against a person in your position meeting with persons who are subject to your supervision or regulations outside of the presence of attorneys at EPA or Justice Department, and if I may, I will put into the record a memo dated October 7, 1981, from the enforcement counselor of EPA entitled "Contacts With Defendants and Potential Defendants in Enforcement Litigation." This is a one and a half page document, Ms. Lavelle, throughout the period of time in which you were assistant administrator.

[The memo referred to follows:]

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., October 7, 1981.

Memorandum to: John Daniel, Chief of Staff.
Subject: Contacts with defendants and potential defendants in enforcement litigation.
From: Office of Legal Counsel and Enforcement.

Most of the Agency's staff is aware of the need to consult with the Department of Justice (DOJ) before contacting defendants in enforcement litigation or potential defendants in cases referred to Justice for filing. I want to stress the importance of giving DOJ an opportunity to participate in any meetings with such persons or firms to review their compliance status. Failure to observe proper practice in this regard can seriously undermine the Department's ability to effectively represent EPA and ultimately diminish the prospects for satisfactory enforcement of environmental laws.

Headquarters and regional enforcement personnel should already be aware of the importance of including Justice in such discussions when they are initiated by EPA, and of giving the Department notice of and opportunity to attend meetings requested by potential defendants or their counsel. Justice's caseload may not always permit them to send a representative, in which case EPA staff should thoroughly coordinate the ground rules of the contact with DOJ in advance. Follow-up information should be provided to the Department's attorneys promptly after the conclusion of any meetings. This is the procedure I shall expect to be followed at all times.

I also want to urge enforcement staff to caution their "client" program offices and others within the Agency about the sensitivity of contacts with persons or firms that have been named in cases referred to Justice for filing. There are many matters unrelated to an enforcement action—processsing of grants, development of rules, etc.—in which a party may be interested and which may be discussed without counsel present. Care should be taken, however, to determine the purpose(s) for which meetings are sought by defendants and potential defendants so that appropriate arrangements can be made. If matters related to a pending case are raised by such persons during the course of a meeting arranged for other purposes, the discussion should be interrupted and continued only after consultation with in-house enforcement counsel and DOJ.

Your cooperation will assure that litigation strategy is not compromised by inappropriate discussions, and can avoid embarrassment from last minute cancellation or rescheduling of meetings. If you have questions about whether a particular person, firm, or state or local government is a defendant in enforcement litigation or is a potential defendant in a case which has been referred to the Department of Justice, please contact Johathan Libber of my staff at 426-7503.

WILLIAM A. SULLIVAN, Jr.,
Enforcement Counsel.

Senator MITCHELL. Were you aware of this document or at least the substance of the document?

Ms. LAVELLE. Not aware of the document, but the substance was pointed out to me.

Senator MITCHELL. Had you ever read this document?

Ms. LAVELLE. No.

Senator MITCHELL. Who pointed it out to you?

Ms. LAVELLE. I believe it was the Ethics Officer for the Agency when I was signing my disclosure forms, he went through some of this with me. I really didn't know what ex parte meant.

Senator MITCHELL. Do you know what it means now?

Ms. LAVELLE. I think it is a practice wherein attorneys, once they are in a litigation mode, maybe even in regulations, that you are not allowed to meet with the client, without attorneys being present.

But I understand that it is not—that is my understanding.

Senator MITCHELL. Well, I will point out that this document that was enforced throughout your time by the enforcement counselor, I wanted to stress the importance to participate in any meetings with such persons or forms to review their compliance status. This involves contacting defendants in enforcement litigation, or potential defendants in cases referred to Justice.

Ms. LAVELLE. I think that is the distinction, I knew of that responsibility, I would never participate in such discussions, nor would they from the others.

Senator MITCHELL. So it is your testimony here today that to your knowledge, you never participated in meetings which violated this requirement?

Ms. LAVELLE. That is right, sir.

Senator MITCHELL. You never met with a defendant or a potential defendant in enforcement litigation outside the presence of an EPA attorney?

Ms. LAVELLE. To discuss matters of enforcement litigation itself.

Senator MITCHELL. So you had such meetings but you did not discuss the subject of the litigation?

Ms. LAVELLE. Sure, there was a lot to discuss.

Senator MITCHELL. Are you concerned with the propriety of meeting with persons who are subject to this rule, and that some might think you discussed the subject matter of the litigation?

Ms. LAVELLE. Well, I think that is the sickness within the Agency. Everybody thinks the worst of anybody, and I am not saying go the other way, but there should be investigations. I am telling you that I never participated in any type of discussion of a case in ex parte mode.

Senator MITCHELL. The problem is, Ms. Lavelle, the reason such rules exist is not merely to prohibit the discussion, but to prohibit the appearance of inpropriety.

Ms. LAVELLE. That is correct.

Senator MITCHELL. First you refer to the sickness, this is dated October 7, 1981, in which reaffirmed a requirement that had been in existence for some time.

Ms. LAVELLE. Is it a regulation, sir?

Senator MITCHELL. It is a statement of policy I believe, and second that this occurs in many areas other than EPA, a judge does not talk to one of the parties in the case while the case is pending even if they only talk about baseball or the weather, and they do not do so because to do so creates the appearance of impropriety and calls into question the impartiality of the person responsible for making decisions.

Now there is a separate requirement, I believe this is again a statement of policy or a regulation, which affects these actions by you, and that is dealing with the acceptance of gifts or gratuities, and this occurs in the Code of Federal Regulations, and has been in force for several years. This statement of policy prohibits or seeks to discourage EPA people in accepting gratuities, like meals, from any person, corporation or group, and then it specifies those groups.

One, has or is seeking to obtain contractual or other business from EPA; two, has interests substantially affected by such employees performance or nonperformance; three, in any way attempting to affect the employees official action; four, conducts operations or activities that are regulated by EPA.

Now I submit to you both the second and fourth descriptions apply to the many groups, representatives of which you wined and dined with. First, they represented companies whose interests may be affected by such employees performance or nonperformance, and fourth, they conduct regulations et cetera, et cetera.

You stated the reason you sought them out was precisely because they were the persons most likely to be affected by a decision, and therefore most subject to regulation by your agencies.

That is the second rule which has been violated in your case.

Senator Chafee referred to it, and I do not—I will regard it as the most significant aspect of these hearings.

I would now like to get into one other area of clarification.

In your remarks to a question by Senator Stafford regarding the fact that—I won't try to repeat it—but he talked about the problems created when you meet with industry officials and not with so-called environmental groups.

You said you had reviewed your calendar.

Ms. LAVELLE. Yes.

Senator MITCHELL. And that you had met with—you identified the industry group, and then you say you met with the BRDC, but not because of the ex parte requirement. Then you said you met with 33 citizens' environmental groups on the scene.

Ms. LAVELLE. That is what I came up with.

Senator MITCHELL. I would point out your calendar does not contain schedules of the activities when you were out of Washington.

Ms. LAVELLE. That is correct.

Senator MITCHELL. And I am sure you did not want to mislead us, but since you preceded the thing by the calendar, it should be made clear there is nothing in your calendar about meeting with these groups, and these 33 groups, I would ask you to make available to us so we could see who these groups were and where it was you met with them.

Ms. LAVELLE. I went through and saw when I was in what town, like in Rhode Island when I met with groups up there, so that is how I got my count.

I will be glad to submit it.

Senator MITCHELL. When you say "some groups," would you go and meet with the Governor?

Ms. LAVELLE. No, what I call the environmental constituents, the citizens and the site.

Senator MITCHELL. If you would make that list available to us, please, so we would have it, your calendars are public, the documentation on the other side is not available.

[As of the date of publication of this hearing the information requested was not received.]

Senator MITCHELL. Also, in all fairness, regarding the industry representatives, the word polluters has been used and I don't want to challenge that, but the fact of the matter is, and you are aware of it, that many of these companies deposit hazardous wastes under circumstances which led them to believe they were in accordance with the law.

Ms. LAVELLE. Yes, sir.

Senator MITCHELL. They were granted permits, and they often thought they were complying with the law and later, no doubt, were surprised to find they were not.

I think that should be pointed out just in fairness to them.

Now, I would like to get back to the line of questioning I began with earlier this morning, and that is regarding any discussion you may have had with any person regarding the possible political implications of the decisions you made as assistant administrator. I asked you to identify them and then the time ran out.

Let me begin by referring to some specific instances, and then ask you to complete the list with any others you can recall.

I have before me a copy of the St. Louis Post Dispatch, dated December 7, 1982. It is an article which says "Partisan Power to EPA."

I want to read this to you.

> Rita Lavelle said she would be playing into the hands of Senator Kennedy if she ordered emergency steps in the Missouri dioxin case, informed sources say. Miss Lavelle, the top EPA official in charge of hazardous waste, remarked that such an emergency response would aid a proposal by Kennedy to compensation by toxic chemicals.

Kennedy's proposal was expected to be a major issue in the next session of Congress. EPA spokesmen said Ms. Lavelle denied having made any such statements. The sources at the meeting said they remember the statement because they had been startled that she would make such a political partisan commitment.

Now, at the outset, this was called to my attention because I am the author of that legislation and not Senator Kennedy.

I would be interested to ask, first, did you attend a meeting in Missouri in that period of time, November or December, regarding the Missouri dioxin case?

Ms. LAVELLE. I believe that meeting you are talking about was in my office.

Senator MITCHELL. In Washington?

Ms. LAVELLE. Yes.

Senator MITCHELL. And it says here November 19 in your office here.

Ms. LAVELLE. I am assuming the dates are right.

Senator MITCHELL. Can you tell me, please, who was present at that meeting?

Ms. LAVELLE. Easter, the head of the Department of Natural Resources for the State of Missouri. I cannot remember who else, I suppose Mr. Heardron.

Senator MITCHELL. If I may read the persons identified here, Mr. Bornstein, Governor Bond's representative in Washington, do you recall his presence?

Ms. LAVELLE. Yes.

Senator MITCHELL. And it says an aid to Bornstein, and another EPA official were also at the meeting.

Can you recall if there were two additional persons there?

Ms. LAVELLE. I don't remember, but they would have had people there.

Senator MITCHELL. It was unlikely you had a meeting like that by yourself.

Ms. LAVELLE. I cannot remember who it was.

Senator MITCHELL. Would you please tell us what you said at that meeting? First off, do you deny making the statements attributed here?

Ms. LAVELLE. Yes, who did they quote making that——

Senator MITCHELL. Sources. I wish you would then tell us if you deny this, what did you say?

Ms. LAVELLE. Well, again, what did I say November 19, what did I say yesterday?

The situation was tense. Our scientists had shown there was no emergency situation there in Missouri. It was a situation of concern, and I do remember discussing this with the Governor on the phone, that it was a sensitive situation, that the State and the Federal Government should work together so our health assessments were consistent and work out the differences or present the differences, but at least go together with the Government voice.

The risks associated with the amounts was in dispute and people were concerned, people wanted to know what good science would show, and I remember going through this with him, and the Governor was very concerned about the national interests adding up due pressure there in Missouri, and I remember that kind of a discussion, and I may have said something like—I cannot reconstruct what I said, even when I was fired—but I may have said something like there is a lot of legislation pending here in this whole area, and maybe that is how that was constructed.

Senator MITCHELL. Can you recall if you referred to that?

Ms. LAVELLE. I cannot.

Senator MITCHELL. You never referred to that?

Ms. LAVELLE. No, I don't know.

Senator MITCHELL. Can you recall if you made a statement to the effect that if we do this now we will play into the hands of Senator Kennedy or anybody else pushing such legislation?

Ms. LAVELLE. I don't think I would have said something like that.

Senator MITCHELL. So you don't recall saying anything similar to that that could have been so constructed?

Ms. LAVELLE. No, I just was very conscious of the national interests and, basically, we wanted to solve the problem.

Senator MITCHELL. Did you discuss in any way the effect that action would have on other national pending legislation?

Ms. LAVELLE. No, I just said there is a lot of pending legislation back here in areas connected with hazardous waste, and that is probably why there is an interest in it.

Senator MITCHELL. And did you indicate that could be affected by the decision you took in that case?

Ms. LAVELLE. No, I think it was always from—it was always I am more concerned about what was being told to the citizens, that they get the truth, and that by us all being in conflict as Government agencies, our science was in dispute and there was no authority that we could point to.

Senator MITCHELL. If I may, however, that has nothing to do with the subject of other pending legislation, my question deals with your reference to other pending national legislation.

What is the context in which it was raised and did you say anything which could have been construed by a person to suggest that the action you were taking in this case might have an effect in some way on other pending national legislation?

Ms. LAVELLE. The only thing I can remember is there is a lot of national interest and national legislation pending, and, Governor, I understand your problems.

Senator MITCHELL. So as far as you are concerned, your testimony is, it could not have been any basis for the interpretation of your remarks given here?

Ms. LAVELLE. To the best of my recollection, no, and I think the person who made that comment to that article, the auditor was on my staff.

Senator MITCHELL. Was on your staff?

Ms. LAVELLE. Yes.

Senator MITCHELL. You are aware of who made that statement?

Ms. LAVELLE. Could you read it to me again?

Senator MITCHELL. I must have misunderstood you. I thought you said the person who made that comment was on your staff.

Ms. LAVELLE. No, the person who made the comment that—she didn't make it, you read me a sentence.

Senator MITCHELL. They said Ms. Lavelle cannot deny making categorically that statement.

Now, referring also to another site, and that is the Stringfellow Pit in California, to which you have heard referred.

As I understand your testimony here, it is that you formerly worked at Aerojet?

Ms. LAVELLE. Yes, sir.

Senator MITCHELL. When you appeared before this committee, you assured us that you would recuse yourself from issues involving your former employer. In your position as assistant administrator you actively participated in the matter of the Stringfellow acid pits in California, and you sent a memo to somebody in the region on June 15. Senator Stafford asked you if you telephoned her; I don't think you answered that. Then you said on June 17, Thursday evening, you saw a list of the persons who had deposited waste in that dump, because you were planning to send out notice letters, and for the first time, you became aware that Aerojet was a company that deposited waste there, because you saw them on the list?

Ms. LAVELLE. Yes, sir.

Senator MITCHELL. And immediately thereafter, you had recused yourself from any further activities in connection with that case?

Ms. LAVELLE. That is a fair statement of my testimony.

Senator MITCHELL. So what you are saying is that you did not know prior to June 17, that Aerojet deposited any waste in that dump?

Ms. LAVELLE. The Thursday evening.

Senator MITCHELL. Thursday was the 17th, and you recused yourself on Friday the 18th, immediately upon learning of it; is that correct?

Ms. LAVELLE. Yes.

Senator MITCHELL. So that prior to then, you did participate in decisions involving a dump, but you were unaware that Aerojet again had been involved?

Ms. LAVELLE. Yes, sir, that is correct.

Senator MITCHELL. My first question is, to go back to Senator Stafford's question, in your communication with Sonia Crow, who is the regional administrator, there is a notation stating you would follow up.

Did you in fact call her or did the other events intervene that I described?

Ms. LAVELLE. I truthfully cannot remember, but let me give you 2 seconds, if I can, on what was going on.

This was a multiparty case; it was the permit as you pointed out, for L.A. County, so we had about 250 companies that had used it as a dump.

The region did not have experience in multiparty, and we were basically bringing it to Washington, so we would manage the enforcement case from here, for better use of our resources.

We went through SWAMO and we thought we had the expertise, so there was a lot of discussion back and forth with Mrs. Crow as to who would send the letters and that sort of scenario.

The first time was that Thursday evening, when they showed me the list; there it is, and I said, OK, I am out, Lasaro is in charge, and I got out.

Senator MITCHELL. After June 18, did you participate in any way, either in attending meetings, having conversations yourself, listening to conversations among others, or reading documents involving the Stringfellow Acid Pit case?

Ms. LAVELLE. OK, I participated absolutely in no way in decisionmaking meetings or anything that would lend credence to a particular policy or approach from my office. However, and again as senior manager, I did not necessarily leave the room every time the word "Stringfellow" came up. There were weekly reports. I saw press statements. But I did not in any way seek participation, and in fact I avoided it. Sometimes staff would inadvertently send up briefing packages and I would send them back.

Senator MITCHELL. The word "recusal" suggests that you would divorce yourself entirely from the case for the reasons that are obviously stated here. You are careful to say in your remarks you did not participate in any decisionmaking meeting.

Ms. LAVELLE. Right.

Senator MITCHELL. What is or is not a decisionmaking meeting of Government has been a subject of controversy, meaning in some cases the sunshine laws. Oftentimes decisions are made at places and at times other than at meetings which are publicized as decisionmaking. You are aware of that.

Ms. LAVELLE. Yes.

Senator MITCHELL. Now, I would like to get, if I could, a little more detail from you. Let me see if I understand you clearly—you didn't read anything about it and once in a while in the course of a meeting on something else it would come up.

Ms. LAVELLE. Let me cite an example. I knew that the $6.1 million was going to be obligated on or about July. Why did I know? My immediate office was preparing an announcement package for the Administrator, so that was work they were doing that I couldn't use them for. Second, I was watching the numbers to try and use up the 1982 money that we had been given, and $6.1 million would put us into the 90 percent. So I was watching it. But I in no way directed it or was in decisionmaking meetings. I guess that's the best way I could say it.

Senator MITCHELL. Is it your testimony here, except for incidental contacts arising out of the fact of your physical presence in the office where activities regarding Stringfellow took place, that you did not participate in any way involving Stringfellow? I am not just talking about decisionmaking, that you didn't sit in on Stringfellow meetings, you didn't talk to anybody about it, you in effect acted on your recusal decision. Is that what you are saying here today?

Ms. LAVELLE. That is the best of my recollection, yes, sir.

Senator MITCHELL. Now with respect to Stringfellow, it, of course, has been the subject of a lot of stories in the paper, and I want to ask you, during the time that you were involved in the decisionmaking process, that is, the time you joined the Agency as a consultant following your nomination until June 18, did you at any time discuss with any person the political implications in California or nationally of a decision involving Stringfellow Acid Pits?

Ms. LAVELLE. I discussed—let me think—I discussed—there was a schism between two citizen groups at the site. I discussed it with them. I discussed it, a review of what their thoughts were, with the region.

Senator MITCHELL. That is not what I am referring to by political implications.

Ms. LAVELE. The answer is no on that part.

Senator MITCHELL. You never did?

Ms. LAVELLE. Just the citizen politics in California.

Senator MITCHELL. For example, the effects of this upon the then ongoing Senate race between Governor Brown and Mayor Wilson, you never discussed the effect of the decision on Stringfellow with anyone?

Ms. LAVELLE. Well, I was recused.

Senator MITCHELL. I am talking about prior to the time you recused.

Ms. LAVELLE. Not that I can remember. I was shoving the case forward. I mean it looked like a good enforcement case. It looked for a good obligation, $6.1 million. I wanted to get the money obligated. I mean that was never—I may have mentioned it as an aside, but it was never a driver or contributor to the decisions that were made.

Senator MITCHELL. I did not ask you whether it was a driver or contributor to the decisions that were made. I did not ask that. My question is did you ever discuss it with anybody?

Ms. LAVELLE. I can't remember any such discussion.

Senator MITCHELL. All right, to your knowledge, were there any discussions to which you yourself were not a party to that effect at any time?

[No response.]

Senator MITCHELL. To your knowledge.

Ms. LAVELLE. Well, the reason I was conferring with counsel is I want to be sure not to hurt anybody's character or do anything like that. But there were—when the announcement was not made, the reason was given that was a 50-percent question, whether it was a 50-percent site owned and operated by the State and county, but there were rumors. This is why it is particularly vicious, that it was indeed a situation with the Administrator and Mrs. Crow, when the Administrator got off the plane and decided not to make the announcement.

Senator MITCHELL. Why?

Ms. LAVELLE. You know, this is hearsay. I am just trying to give you the best record I have.

Senator MITCHELL. Well, what was the hearsay?

Ms. LAVELLE. That she thought it might possibly not—that it might help Jerry Brown too much.

Senator MITCHELL. She is Mrs. Crow?

Ms. LAVELLE. This is Mrs. Burford.

Senator CHAFEE. Let me ask you a question here, if I might. It is very important to distinguish. Did you hear Mrs. Burford say that?

Ms. LAVELLE. No, sir, I did not say that. I never heard that. And in fact, my senior program manager, Hedeman, was going into the policy discussion of 50 percent. I want to make that perfectly clear. I never heard anything. I have no firsthand knowledge.

Senator MITCHELL. If I may, Mr. Chairman, I intended to ask that. Perhaps after I finish if you care to ask any questions you may.

When you said the decision was not announced, my understanding was the decision had been scheduled to be announced in July.

Ms. LAVELLE. July 27.

Senator MITCHELL. As you testified, the decision has not yet been made.

Ms. LAVELLE. To my knowledge.

Senator MITCHELL. When you refer to the 50-percent requirement, you are referring to the requirement under the law if a State owns the site it must come up with 50 percent of the cost.

Ms. LAVELLE. Right.

Senator MITCHELL. This is now a State-owned site; is it not?

Ms. LAVELLE. Yes, sir.

Senator MITCHELL. And the State must come up with 50 percent.

Ms. LAVELLE. Right.

Senator MITCHELL. You said there were rumors and there was hearsay regarding the statement by Mrs. Burford, and your response to Senator Chafee's question was you did not hear Mrs. Burford say that.

Ms. LAVELLE. That is correct.

Senator MITCHELL. My question is to you, from whom did you hear that remark? How did it come to your attention? Was it through a written document, through a spoken word? As best you can recall, how did you come into possession of that information?

Ms. LAVELLE. It was spoken, and you are going to ask me who and I—it was someone in my staff, and I am not trying to avoid, I really just don't remember.

Senator MITCHELL. Someone on your staff?

Ms. LAVELLE. My staff had prepared the advanced package for the Administrator.

Senator MITCHELL. Can you identify the persons on your staff with whom you are likely to have engaged in this type of discussion? You apparently had several, a great many, employees, some of whom you probably hardly ever saw or talked to, others whom you talked to regularly.

Ms. LAVELLE. A lot of them are no longer with the Agency right now. I guess it would have been maybe Gene Ingold or Earl Voss, who is still with the Agency, perhaps Susan Baldaga, and perhaps I think Hedeman or Elaine Stanley, because they were preparing the material for the Administrator. But I really can't remember.

Senator MITCHELL. Your recollection is that it came from a member of your staff, and you have identified four members of your staff at that time from whom the statement likely would have come because they were working on the case at that time?

Ms. LAVELLE. Yes, sir.

Senator MITCHELL. Did you ever discuss that further with either Mrs. Burford or Miss Crow?

Ms. LAVELLE. Mrs. Crow.

Senator MITCHELL. Mrs. Crow.

Ms. LAVELLE. No.

Senator MITCHELL. What is Mrs. Crow's title?

Ms. LAVELLE. She is regional administrator of Region IX.

Senator MITCHELL. Do you have any information regarding any other possible statements of that type regarding the Stringfellow Acid Pits?

Ms. **Lavelle**. I have thought about it, and not that I can remember.

Senator **Mitchell**. Now, Ms. Lavelle, I will ask you to go back to the question I asked you at the outset in a somewhat broader context. You said you had had several such discussions. Regarding the Times Beach matter in Missouri, and other matters in Missouri, did you yourself ever participate in a conversation in which the possible effect of action in that case upon the then current Senate race in Missouri was discussed?

Ms. **Lavelle**. No; and I would like to clarify that for the record because it is—there is casting aspersions upon Senator Danforth that I made some sort of deal for him to announce an R&D cleanup. The scenario was that Senator——

Senator **Mitchell**. Let me say I intended no aspersions on Senator Danforth. I don't know anything about what you just said.

Ms. **Lavelle**. That is supposedly the political deal I have been reading about in the newspapers.

Senator **Mitchell**. That is one I haven't read. I thought I had read them all. You go ahead.

Ms. **Lavelle**. That is the only one I have heard. Maybe there is another one with Missouri.

But both Senator Eagleton and Senator Danforth, the good Members of the Congress down there—and I said good because they are a good group in representing their State and their State's interest—were pushing me to get some sort of cleanup, come up with alternative technologies. The major problem was there was no way to get rid of the dioxin once found. Yes, Senator Danforth was at the stables. And why? Because his children played in those stables and he had a personal interest above and beyond. So there is absolutely no conflict, there is nothing "political," quote unquote. I am glad to clarify it.

Senator **Mitchell**. Let me make clear, and this is not just senatorial baloney, I have the highest regard for Senator Danforth and did not want anybody to construe I was casting aspersions upon him. The question was whether you yourself participated in any discussion regarding the possible political impact of the decision or in the matter before you at that time, and I gather your answer is no.

Ms. **Lavelle**. No.

Senator **Mitchell**. Are you aware of any such discussions occurring between any other persons regarding a possible political impact in Missouri on any decision involving Times Beach or any other matter before the Agency at that time?

Ms. **Lavelle**. No, sir, I just wasn't aware of it. We just didn't think that way. We were trying to get these sites cleaned up, and not, by the way, so-and-so was Governor or so-and-so was Governor.

Senator **Mitchell**. I have asked you about two specific sites in California and Missouri. I will phrase the question in more general terms. Did you yourself ever participate in any discussions in which the political implications of matters before you were discussed anywhere in this country?

Ms. **Lavelle**. You mean in terms of running the Superfund program?

Senator MITCHELL. Yes; any matters before you, not just Superfund.

Miss LAVELLE. I am not trying to avoid your question. Obviously we discussed with the citizens, so that politics, with a small "p."

Senator MITCHELL. Other than that?

Ms. LAVELLE. I want to reiterate once again, there was no consideration as to who is representing what district in terms of establishing priority or when certain actions would be taken.

Senator MITCHELL. I am not attempting to be accusatory, I am just actually trying to give you the opportunity to respond to what our reports are, which are somewhat contrary to what you have said from the sources that aren't identified. I will read to you a story from the Washington Post dated February 9, 1982, which says, and I quote, the first two paragraphs say:

> The embattled Environmental Protection Agency was accused yesterday by a House committee chairman and by three EPA officials of manipulating for political purposes the Agency's $1.6 billion fund to clean up the Nation's most dangerous hazardous waste dumps. The EPA officials, who requested anonimity, said that several toxic waste dumps were placed on a "election track" last fall, preventing any money from being spent on cleaning them up or prosecuting illegal dumping for fear it might help Democrats running in the surrounding area.

My question to you is, you categorically deny——

Ms. LAVELLE. Yes.

Senator MITCHELL [continuing]. That any such things occurred?

Ms. LAVELLE. Totally. We never even had the word "election." I don't know where that came from.

Senator MITCHELL. Apart from election, I am concerned about the substance. You are saying there were no such considerations?

Ms. LAVELLE. No.

Senator MITCHELL. And the only conversation that you have any knowledge of that could be remotely interpreted this way was a conversation which you did not hear and which, as you say, was hearsay. You have no knowledge that that took place.

Ms. LAVELLE. That is correct.

Senator MITCHELL. That is the conversation between Mrs. Burford and Mrs. Crow, and you made clear you have no knowledge whether it actually took place.

Ms. LAVELLE. That is correct.

Senator MITCHELL. It was told to you by a person who you think was on your staff but you cannot recall this person.

Ms. LAVELLE. That is correct.

Senator MITCHELL. Now, you have referred——

Senator CHAFEE. I wonder if the Senator could give me some indication how long he thinks this might go. He will in no way question the patience of the chairman. I am just trying to get a timetable because I have to give a talk at 3 o'clock and I have to prepare for it, and I have some people coming in to see me in advance. The question is, should I get a substitute? Should we adjourn until Senator Stafford can come back? It all depends on how long you feel you might be. I am not pinning you down to the exact minute, but roughly.

Senator MITCHELL. I will try speeding it up and hopefully we can finish in time for you to make your other engagement. But you see, I can't predict the length of the answers. I can predict the length of the questions.

Senator CHAFEE. I can predict when I have to be out of here.

Senator MITCHELL. I will do it in whichever manner is most accommodating.

Senator CHAFEE. Unlike most Senators, I am not totally prepared for my speech at 3 o'clock.

Senator MITCHELL. Senator, I will do it in whichever manner is most accommodating to you. I have questions I want to ask and I want to stay here until I ask them.

Senator CHAFEE. Why don't you proceed. Roughly you would say you are going to be something in the neighborhood of an hour; is that about it?

Senator MITCHELL. I hope less, Mr. Chairman, but I can't predict with certainty. I will do my best. I don't want to unnecessarily detain you, Senator Stafford, or Ms. Lavelle. I want to ask some questions that I think should be asked.

Senator CHAFEE. Why don't you proceed.

I do want to note for the record, since Senator Danforth and Senator Eagleton's names have been raised, that both those Senators communicated frequently with this committee showing their concern about Times Beach, and those communications were November, December, January, February, in which both of them were deeply worried and concerned that every possible effort be exerted by this committee to effect a cleanup at Times Beach.

Why don't you proceed.

Senator MITCHELL. Now, Ms. Lavelle, you stated earlier that the reason given to you for the requested resignation in meeting with Mrs. Burford was, as you put it, quote unquote, the "memo," in which there was an accusation made against Mr. Perry, who is the General Counsel, that he was, and I quote, "Systematically alienating the primary constituents of this administration, the business community." That is the end of the quotation. According to a story in the Washington Post dated February 18, Mr. Gene Ingold, a former assistant of yours, had stated that he wrote those words. To your knowledge is that correct? Did he write those words?

Ms. LAVELLE. Yes, sir, he told me that he did, he wrote it. I know I did not. That is the important thing.

Senator MITCHELL. When did you become aware that Mr. Ingold wrote those words?

Ms. LAVELLE. The Monday the week that I was fired. Actually, it was the Tuesday morning. I spoke with a reporter from the New York Times Monday evening to insure that, or to answer an inquiry he had written in the memo to the White House, to review it with me Tuesday morning in depth. When he started going through the contents, he said he had an index to the disk, read me the contents of the disk, and I became aware from reading the index perhaps it was Mr. Ingold's disk.

Senator MITCHELL. According to Mr. Ingold, and I believe according to your statement, this was a memorandum that he prepared, so-called talking points, for you in advance of a meeting that you were scheduled to have with Mrs. Burford; is that correct?

Ms. LAVELLE. That is correct.

Senator MITCHELL. Did that meeting for which the document was prepared ever take place?

Ms. LAVELLE. No, sir, it did not.

Senator MITCHELL. Did you ever use those words yourself, or words to that effect?

Ms. LAVELLE. The primary constituents?

Senator MITCHELL. Yes.

Ms. LAVELLE. No.

Senator MITCHELL. When did you first meet Mr. Ingold?

Ms. LAVELLE. When did I first meet him?

Senator MITCHELL. Yes.

Ms. LAVELLE. I am going to say April, May, in there.

Senator MITCHELL. Of last year?

Ms. LAVELLE. Yes.

Senator MITCHELL. In other words, you did not meet him before you came to work for the EPA?

Ms. LAVELLE. No, sir.

Senator MITCHELL. What was his position in relation to yours?

Ms. LAVELLE. He was—I may be wrong, but he was an employee of the Department of Energy who had been RIF'd and was looking for a job.

Senator MITCHELL. Did you hire him?

Ms. LAVELLE. Yes, sir, I did.

Senator MITCHELL. And what was his position in your office?

Ms. LAVELLE. Special assistant.

Senator MITCHELL. To you?

Ms. LAVELLE. Yes, sir.

Senator MITCHELL. Was he a top ranking aid of yours?

Ms. LAVELLE. Yes; I gave him a lot of responsibility. His primary responsibility was writing for me.

Senator MITCHELL. Did you have confidence in his judgment?

Ms. LAVELLE. Yes, sir, I did.

Senator MITCHELL. Did you see him on a daily basis?

Ms. LAVELLE. Daily or every 2 or 3 days, yes.

Senator MITCHELL. Did you discuss with him the activity of the Superfund or the activity in which you were engaged as Assistant Administrator?

Ms. LAVELLE. Not that much really. I mean in terms of discussion. He dealt more with the officer directors there.

Senator MITCHELL. What is your understanding of this memo, that it reflects views that Mr. Ingold was attempting to press upon you?

Ms. LAVELLE. No; the way Mr. Ingold represented to me, he didn't even—he is an individual with a lot of experience, but he didn't even have a chance to edit it and it is totally embarrassing to him. It is something this unprofessional got all the credence that it did.

Senator MITCHELL. My question was, was it your understanding this represented a view he was attempting to get you to take, or rather did he, as a staff person preparing this for a meeting with someone else, attempt to record views he believed you held?

Ms. LAVELLE. No; I believe he was attempting to record views within the office. There was a lot of tension between Mr. Perry's shop and my shop, and I was approaching the Administrator to try to get it resolved.

Senator MITCHELL. Did you believe Mr. Perry was alienating the business community?

Ms. LAVELLE. Well, I would have never made a statement like that.

Senator MITCHELL. You would never make a statement like that, did you say?

Ms. LAVELLE. Alienating the business community, I think it was alienating a lot of people.

Senator MITCHELL. Wholly apart from whether you said it, did you believe it?

Ms. LAVELLE. That he was alienating a lot of people?

Senator MITCHELL. Yes.

Ms. LAVELLE. Yes; I do believe it.

Senator MITCHELL. Including the business community?

Ms. LAVELLE. Why sure, but he didn't have that much interaction with the business community. I was just saying I had a problem with the way he was conducting himself in the office.

Senator MITCHELL. In fact, the same phrase appears, does it not, in the matter regarding Waukegan Harbor, to which we earlier referred, and to which Mrs. Burford sent to the Attorney General's office and which he described as a statement which you provided to her office. You recall your earlier reference to that statement?

Ms. LAVELLE. Yes, sir, but don't forget that was from the same——

Senator MITCHELL. I understand, from the same memo. And in response to my question, you read the first sentence of that memorandum, or that portion of the memorandum. Do you recall that?

Ms. LAVELLE. Yes.

Senator MITCHELL. Would you now read the entire statement?

Ms. LAVELLE. The entire statement?

Senator MITCHELL. Yes.

Ms. LAVELLE. For the record or just read it?

Senator MITCHELL. Yes; read it for the record.

Ms. LAVELLE [reading]:

> After a long period of time, OMC officials were persuaded that EPA might seriously considered a new settlement offer. When their attorneys arranged a meeting with Perry, no OMC representative was invited. Perry rejected the first proposal and seriously alienated the companies, according to me. The reason, he has not managed to have an assistant U.S. attorney make a request for a new offer.

Senator MITCHELL. So, is your testimony here today that statement which appeared in the memo for which you were asked to resign regarding alienating the business community as the primary constituents of this administration was neither authorized by you or reflected your views at the time? Is that correct?

Ms. LAVELLE. That is correct. Furthermore, it was not a memo.

Senator MITCHELL. The document.

Ms. LAVELLE. Yes.

Senator MITCHELL. In your statement and in response to questions you refer, on several occasions, to Mrs. Burford's concern about your communications or access to the White House, and you referred specifically to the initials W. H. on the document, which you said led her to believe it was going to the White House, when in fact your understanding is it referred to a person whose initials those are. Do you recall that testimony?

Ms. LAVELLE. I recall, but that wasn't exactly what I thought I said.

Senator MITCHELL. Let me ask a question. First off, what is the basis for your conclusion that Mrs. Burford believed that W. H. referred to the White House? Did she say that?

Ms. LAVELLE. She accused me.

Senator MITCHELL. What did she say?

Ms. LAVELLE. She accused me of writing a memo to the White House regarding Perry's performance.

Senator MITCHELL. So, in other words, the document that Ingold prepared, Mrs. Burford understood to be a memo written by you to be sent to the White House complaining about Perry; is that a fair statement of what you are saying?

Ms. LAVELLE. That is a conclusion I was led to believe.

Senator MITCHELL. Did you tell her what you said here today, first, you had not written the document, second, it is not to the White House, and third, W. H. didn't stand for White House?

Ms. LAVELLE. I told Mr. Daniel Tuesday morning. I don't know what Mr. Daniel represented to the Administrator, but obviously it was enough to provoke her to ask for my resignation.

Senator MITCHELL. When she said that to you——

Ms. LAVELLE. When she said what?

Senator MITCHELL. You said earlier she told you she thought you had written this memo to the White House. Did you, at that point, respond and explain to her what you have said here?

Ms. LAVELLE. I tried. I was told we will not discuss it at that point.

Senator MITCHELL. You mean she wouldn't permit you to give the explanation?

Ms. LAVELLE. She wanted my resignation. It was beyond discussion.

Senator MITCHELL. Let me make sure I understand. What you are saying is that the Administrator of the EPA asked you to resign.

Ms. LAVELLE. On Friday.

Senator MITCHELL. The reason she gave for it was the document which she called a memo that she believed you had written and which had the initials W. H., which led her to conclude that it was sent to the White House, and that when you attempted to explain, you were not given the opportunity to. Is that what you are saying?

Ms. LAVELLE. I was not given the opportunity and the reasons cited were that I had lied to her about this, which leads me to believe that she concluded indeed I had done such.

Senator MITCHELL. Had you had a previous conversation about it?

Ms. LAVELLE. OK, Monday of that week she asked me directly have I ever written a memo to the White House or ordered a memo—I am trying to remember—or ordered a memo to be written to the White House about Bob Perry. Bob was there. I said no, I don't operate that way, I have got a boss, and besides that, they are not interested over there, they have enough to do. She said would you call this reporter from the New York Times who thinks that is what he has and clarify. Fine, I did late that evening. Again he read me an index from a disk which he said he had, as well as started telling me what was in these notes. When I heard the index from the disk, it became apparent to me it was probably Ingold's disk. I got in about 7:00, 7:30 the next morning and met with Ingold and said let me see this disk index, and what is going on here. Based on that, I went up to seek the Administrator. She was not in all day Tuesday, but John Daniel came in—he is chief of staff—I guess about 8:15. I was the first order. I presented this to him, said this is the, quote unquote, "memo to the White House," and it certainly doesn't look like a memo to me, and again, I never ordered anything and would not do so, et cetera. The next conversation I had was the firing on Friday.

Senator MITCHELL. I see. So do you know whether or not Mr. Daniel communicated to Mrs. Burford the explanation that you had given to him?

Ms. LAVELLE. I really don't. I find it hard to believe that it was communicated she took such action, but she will have to explain that. But I don't know that it was communicated.

Senator MITCHELL. But she——

Ms. LAVELLE. I tried to get into that discussion on Friday, and there was no discussion.

Senator MITCHELL. She didn't give you the opportunity to give the explanation you have given here today?

Ms. LAVELLE. Right.

Senator MITCHELL. And accused you of having lied to her?

Ms. LAVELLE. Right.

Senator MITCHELL. Now regarding her feelings as to your relationship with the White House, did you ever prior to that time say or do anything that could have contributed to that impression? For example, discussing your relationship with anyone, with Mr. Meese or your contacts at the White House?

Ms. LAVELLE. No; and I will tell you why, returning to the point I tried to make earlier. It was considered extremely poor form. Your boss was the one that dealt with the White House, and I understand, and that's fine. It might have been a few social exchanges with her, but not that I can——

Senator MITCHELL. But your feeling is there was no basis for her to feel this way regarding you and the White House, and based on that, contrary to her assertion that you were not a team player, the team being EPA, the fact is you were a team player?

Ms. LAVELLE. Yes; I most certainly am.

Senator MITCHELL. Now following the Friday which you were asked to resign, in response to a question by Senator Stafford you said on Saturday morning you spoke with Mr. Meese and Mr. Baker.

Ms. LAVELLE. That is correct.

Senator MITCHELL. Can you tell us what the substance of each of those conversations was?

Ms. LAVELLE. I spoke with Mr. Meese first and Mr. Baker second. The press was unbelievable on the whole situation. I told him that, basically the scenario we just went through, what had happened, there were absolutely no grounds in that, I would hope there would be reconsideration, that I was Presidential and as such they had the power of my fate, that this was especially cruel because my reputation was being ruined in the media over the weekend. We agreed cooler heads should prevail and I would get my chance on Monday, and I agreed to not make any comment whatsoever to the media, which indeed I never did.

Senator MITCHELL. Were you asked by Mr. Meese not to make any comment to the media over the weekend?

Ms. LAVELLE. I think it was together. It was a hard one to agree to, let me tell you. Human reaction is to defend yourself.

Senator MITCHELL. Was your conversation with Mr. Baker substantially similar?

Ms. LAVELLE. Just the same; yes, sir.

Senator MITCHELL. You indicated earlier you had been told in your conversation that you would have an opportunity to meet with Miss von Damm on Monday.

Ms. LAVELLE. Yes, sir.

Senator MITCHELL. Who told you that?

Ms. LAVELLE. Mr. Meese, and I communicated that to Mr. Baker and he said he was aware of that.

Senator MITCHELL. He was agreeable to that?

Ms. LAVELLE. Yes, sir.

Senator MITCHELL. In fact, did you ever meet with Miss von Damm?

Ms. LAVELLE. No; I did not.

Senator MITCHELL. Has any further explanation been given to you of your firing?

Ms. LAVELLE. No, sir, none whatsoever.

Senator MITCHELL. Now in your opening remarks, Ms. Lavelle, you commented on the fact you did not have records with you, and in fact I believe you said that you had been denied access to your records. I don't have the statement right before me. But do you recall your words to that effect? Here is it here, "I have not been afforded access to my records for purposes of preparing for today's hearing."

Ms. LAVELLE. Yes, sir.

Senator MITCHELL. Did you request access to your records?

Ms. LAVELLE. No; I have not.

Senator MITCHELL. You have not?

Ms. LAVELLE. No.

Senator MITCHELL. So, when you say you have not been afforded access, if that creates the impression that you have been denied access, that would be a misleading impression?

Ms. LAVELLE. That would be misleading; yes, sir.

Senator MITCHELL. In fact, you have never asked for access?

Ms. LAVELLE. That is correct.

Senator MITCHELL. Is there any reason to believe if you asked for them they would be denied?

Ms. LAVELLE. Well, yes, because——

Senator MITCHELL. Why didn't you ask?

Ms. LAVELLE. Because my personal staff was dismissed on Monday. Boxes of their personal material were confiscated. They were told they were not to take out any Agency files or anything.

Senator MITCHELL. Why didn't you ask for access to your records since you made a point in your opening statement of the fact that you have not had access to your papers, it would obviously place some significance on that fact. Why did you not ask?

Ms. LAVELLE. What I was trying—well, I didn't ask for them because it is too tense. I don't want to talk to any employees over there right now. It is a decision I made. But I am trying to say I was trying to qualify my answers in my testimony, in fact I don't have files or briefing books to go to. That was the purpose of that statement.

Senator MITCHELL. Did you discuss with your attorneys the possibility of requesting access to your records?

Ms. LAVELLE. Yes.

Senator MITCHELL. Was there a conscious decision on your part after consultation with your attorneys not to ask for your records prior to today's hearing?

Ms. LAVELLE. No, it was just mine that I probably couldn't get them, so I didn't ask. I just didn't want to approach any people over there. It is a very tense, sensitive situation right now. Anyone that is——

Senator MITCHELL. Surely your attorneys could ask for your records thereby obviating the necessity for you to speak to anybody, could they not?

Mr. JAMES BIERBOWER. If I may say, Senator, I don't think we would get the time of day over there.

Senator MITCHELL. Well, I have no way of knowing that, Mr. Bierbower, and I accept your words. But it seems to me since such stress was placed on unavailability of the records, and, of course, not having access to records makes it more difficult for a person to answer questions, but also makes it more difficult to frame questions and to follow up on questions and permits a person to state, in all candor, that he or she does not recall the circumstances of the question, when, of course, access to the records would not, at least to some extent, not make that possible. I am not suggesting any such decision on your part. But having spent many years as a trial lawyer I am aware, and I am sure both Mr. Bierbowers are aware, oftentimes a witness is better advised not to look at records before testifying because it permits answers to the fact that I cannot recall or to the best of my recollection. And I merely was trying to determine what the circumstances were here.

I would say, Ms. Lavelle, that it is my belief that, as I said at the outset, while I welcome the opportunity for this hearing to have occurred, that no member of the committee, to my knowledge, and certainly not myself, has been able to develop questions in any manner that would permit a full and thorough hearing because it is clear that you are only human and you can't recall everything that was said or done over that period of time, and that access to records of your performance seem to me to be essential for a full and thorough inquiry into this matter. I think only in that manner will it permit those committee members who choose to do so to test your oral responses against the written record. It simply can't be done now. And I do not in any way suggest your oral testimony has been inaccurate or untruthful, simply, if you don't remember something and there is a written record and nobody can see the written record, the questioning and answers in many circumstances cannot get to the heart of the matter. I would therefore say that I appreciate your statement earlier of your willingness in returning to appear before this committee at a time of the committee's choosing, consistent with your own schedule, after such time as we have had the opportunity to look at some records.

I want to ask just a few more questions. I know this has been difficult for you and I don't want to keep you unnecessarily.

We have had considerable discussion about your resignation, and on page 3 of your statement regarding your appearances in the Administrator's office on that Friday, February 4. My question to you is who was present at that meeting besides you and Mrs. Burford?

Ms. LAVELLE. Mr. Daniel and Dr. Hernandez.

Senator MITCHELL. Did they participate in the discussion?

Ms. LAVELLE. No, sir.

Senator MITCHELL. Now on the next page, page 4, the next to the last line of the first paragraph, the phrase is "The alleged 'memo' does, however, represent a stolen read out from a disk which had an index reading 'memo to W. H.' " What is the basis of your statement that that disk was stolen?

Ms. LAVELLE. Well——

Senator MITCHELL. Am I misreading your statement?

Ms. LAVELLE. No, you are reading it, I am trying to think how to phrase my answer.

It was a working document on talking points prepared and physically placed in the folder anticipating my meeting with the Administrator. In fact, when the reporter called it had already been erased from the disk as a working document. I don't know, since the only copy was in that file, it has certainly disappeared, and stolen might be too harsh a word now that I look at it, but how did it get to the New York Times? I don't know. We certainly wouldn't have given something as ridiculous to the New York Times.

Senator MITCHELL. Stolen obviously is a strong work and I wanted to know whether there was any basis for that statement other than the fact that it was at one time in the Agency's files and at another time it was in the possession of the New York Times. I think if we called everything that is leaked to the press here stolen, we are going to have a lot of stealing going on. I am not quarreling.

Ms. LAVELLE. It was taken out of my personal office. How did that occur?

Senator MITCHELL. By whom?

Ms. LAVELLE. I don't know. All I know is—well, there is an interesting chronology of people seeming to be aware of it before the "disk" problem came up.

Senator MITCHELL. What else was taken from your office?

Ms. LAVELLE. I don't know. I am beginning to find out more and more. I am not trying to be facetious.

Senator MITCHELL. I understand. What you are saying is documents were taken out of your office by others. You call them stolen, and yet I am really puzzled by the fact you have failed to request access to your records, if for no other reason it would give you the opportunity to determine what is there or not.

Mr. JAMES BIERBOWER. Senator, if I may say something. We just got these papers here today saying several have been referred to the Department of Justice for prosecution by her own agency and we have to come here to get it.

Senator MITCHELL. Did you request copies of those documents before?

Mr. JAMES BIERBOWER. We never were notified of them.

Senator MITCHELL. It was on the front page of the New York Times some days ago. Were you aware of that?

Mr. JAMES BIERBOWER. I read the New York Times.

Senator MITCHELL. After reading that, did you request copies of those documents from either the Administrator of EPA or the Department of Justice?

Mr. JAMES BIERBOWER. No, sir.

Miss LAVELLE. I point out one of them was sent over February 2. I was still on the payroll. I wasn't notified then.

Senator MITCHELL. I guess that all I am saying is it seems to me it would be a logical step for you to take once learning of the existence of these documents to request their possession.

Miss LAVELLE. Well, I don't—I'm sorry.

Senator MITCHELL. I want to give you a chance. Did you have anything more you wanted to say? I wanted to give you the chance to say it.

Miss LAVELLE. No, fine.

Senator MITCHELL. Miss Lavelle, it has been a long morning for you and I have only a few more questions which I am going to ask you and then go on because you have indicated you will come back and I will ask more questions at that time.

Senator Stafford read to you excerpts from statements you made during the interviews with the staff, and I would like to read four statements, three of which have already been read to you by others. This is a meeting which you had with our staff on February 21 of this week in which you were quoted as saying, "There is no management on the 12th floor." And I will now add, it is not in your statement, the 12th floor being, the common usage, the term to describe Mrs. Burford's office.

Miss LAVELLE. Yes.

Senator MITCHELL. The second, "There is no Agency mission."

Miss LAVELLE. That is correct.

Senator MITCHELL. The third statement, "Anne is in way over her head. She is not a manager."

Miss LAVELLE. I don't remember saying something that hard.

Senator MITCHELL. And then, finally, your statement that you were blind-sided by Agency innuendo.

Miss LAVELLE. That is what I attributed it to. That's the only thing that makes any sense.

Senator MITCHELL. The first, second, and fourth you recall making, the third you do not, the statement to the effect that, "Anne is in way over her head. She is not a manager." Do you believe that now, wholly apart from what you said to the staff?

Miss LAVELLE. Well, I believe she is a very gifted attorney and politician, but she is not a manager.

Senator MITCHELL. Do you think she is in over her head?

Miss LAVELLE. You can get managers if you have to take in the other areas.

Senator MITCHELL. Let me conclude by saying, Miss Lavelle, that I, like the other Senators, do not enjoy having to ask some of the questions we have had to ask today, particularly about your personal dealings with representatives of industry. But those of us who participated in the drafting and enactment of the Superfund law have been deeply concerned about the implementation of that act and what we believe to be insufficient action by EPA in implementing the cleanup of our Nation's waste sites.

I thank you for coming here today. I repeat what I said, that I don't think we have had an opportunity to fully prepare, neither you nor we, and I would strongly encourage you to seek access to your records, we certainly will do so, and give us the opportunity to ask questions again at such a time as we have had an opportunity for a full and thorough review. Thank you very much.

Thank you, Mr. Chairman.

Senator CHAFEE. Now before we adjourn, I understood the Senator's last statement. I think the Senator would say for the record that from the information he has had to date, he has been allowed full opportunity to submit his questions. I don't want to hurry now, no one is cutting you off because I have to go at 3 or before 3 that we have to stop. I mean somebody will stay.

Senator MITCHELL. You mean all of those comments earlier about having to leave were not intended?

Senator CHAFEE. They were intended, but I think it is fair to say this. Could we say for the record you were not rushed?

Senator MITCHELL. We can say for the record that I refuse to be rushed.

Senator CHAFEE. The conclusion is, the Senator was not rushed. Miss Lavelle, thank you very much.

Miss LAVELLE. Thank you, Senator.

[Whereupon, at 2:27 p.m., the committee recessed, to reconvene subject to call of the Chair.]

[Material submitted for the record follows:]

United States
Environmental Protection Agency
Washington, D.C. 20460

February 2, 1983

The Administrator

CONFIDENTIAL

Honorable Edward C. Schmults
Deputy Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Schmults:

It has just come to my attention that Rita Lavelle, Assistant Administrator for Solid Waste and Emergency Response, may have engaged in an ex parte communication with a defendant in one of our enforcement litigation cases. The case is United States of American v. Outboard Marine Corporation and Monsanto Company, No. 78-C-1004 (N. Ill., filed March 17, 1978). I understand that the communication involved settlement terms and the posture of the litigation and that the communication was never reported to the attorneys assigned to the case. I enclose Ms. Lavelle's transcribed statement on this matter which she provided to my office.

I am referring this matter to your attention for review as the circumstances require. You should also be aware that two Congressional committees are investigating Ms. Lavelle, on unspecified matters. I advise you of these other investigations in order that the Congressional activity not adversely affect your review of the matter referred herein.

If, upon review, you determine there is no actionable conduct, I ask that you advise me promptly.

Sincerely,

Anne M. Gorsuch

cc: Carol E. Dinkins

OMC (Waukegan Harbor)

After a long period of time, OMC and Monsanto were persuaded by RML that EPA might seriously consider a new settlement offer. When their attorneys arranged a meeting with Perry, no OSWER representative was invited. Perry rejected the first proposal and seriously alienated the companies (according to them). The Region has now managed to have the Assistant U. S. Attorney make another request for a new offer.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 8 1983

THE ADMINISTRATOR

CONFIDENTIAL

Honorable Edward C. Schmults
Deputy Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Schmults:

I am referring two matters to your attention involving Rita Lavelle, former Assistant Administrator for Solid Waste and Emergency Response.

The first is a potential conflict of interest matter. During Ms. Lavelle's confirmation hearing on March 23, 1982, she agreed to recuse herself from any EPA matters involving her past employer, Aerojet - General Corporation, or any of its subsidiaries. One of the EPA matters being handled by her office is the Stringfellow site, Riverside County, California, which is a hazardous waste site. One of the hazardous waste generators at this site may be Aerojet - General Corporation or one of its subsidiaries. An enforcement sensitive document on the Stringfellow site, however, was sent by Ms. Lavelle to the EPA Regional Administrator in Region IX on June 15, 1982. Subsequently, on June 18, 1982, she recused herself from participating in any EPA dealing with this site. Ms. Lavelle's explanation on this matter is enclosed.

The Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce has informed us that it is investigating and has requested to interview a number of Agency employees regarding Ms. Lavelle's conduct (see enclosed letter from the Subcommittee). Although I am not aware of any evidence of wrongful conduct contained in the Stringfellow documents themselves, however, if you believe any of the withheld Stringfellow documents implicate Ms. Lavelle, in the spirit of the Attorney General's letter of November 30, 1982, to the Subcommittee Chairman, I recommend that you release such documents to the Subcommittee.

The second is a potential perjury charge. On December 16, 1982, Ms. Lavelle testified before the Subcommittee on Natural Resources, Agriculture Research and Environment of the House Committee on Science and Technology. During the hearing, Ms. Lavelle was questioned as to whether she made any statements that she wanted to discredit, harass or fire one of her employees, Hugh Kaufman. We have been informed that the Subcommittee is reviewing her testimony for further action. (See enclosed letter from the Subcommittee.)

I am bringing these matters to your attention so that you will be able to cooperate with the two Subcommittees or to initiate any other review that you deem appropriate.

Sincerely yours,

Anne M. Gorsuch

Enclosures

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2-4-83 Picked up at request of Subcommittee

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February 4, 1983

Honorable Anne M. Gorsuch
Administrator
U.S. Environmental Protection Agency
Washington, D.C. 20460

Dear Ms. Gorsuch:

As you may be aware, Ms. Rita Lavelle, Assistant Administrator for Solid Waste and Emergency Response testified before our Subcommittee on December 16, 1982. In the course of this hearing a discrepancy developed concerning a meeting (or meetings) Ms. Lavelle had with regard to Mr. Hugh Kaufman. In our effort to resolve this conflict, I requested a copy of Ms. Lavelle's calendars by letter dated December 20, 1982.

Our staff has repeatedly contacted Ms. Lavelle's office to determine the status of our request. Mr. George Kopp, our Subcommittee Staff Director was assured on at least three occasions that the calendars would be provided in a timely fashion. Indeed, on one occasion he was advised by Mr. Bill Bernich, an Assistant to Ms. Lavelle, that the calendars would be provided as soon as an accompanying memorandum was completed. When questioned as to the purpose of the memorandum, Mr. Bernich replied that it would explain the reason for the significant number of erasures in the calendars.

Ms. Gorsuch, we are attempting to evaluate a very serious conflict in evidence and in order to conduct this review in a fair and impartial manner, we need the full cooperation of your subordinate, Ms. Lavelle. Ms. Lavelle's apparent effort to thwart this legitimate request for information, coupled with certain statements made under oath during our hearing, have potentially serious implications. Accordingly, I would appreciate your facilitating our receipt of this information.

With every warm best wish,

Sincerely,

JAMES H. SCHEUER
Chairman
Subcommittee on Natural Resources,
Agriculture Research and Environment

JHS/Kgb

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

DEC 13 1982

OFFICE OF
LEGAL AND ENFORCEMENT COUNSEL

Honorable John D. Dingell
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Dingell:

On December 10, 1982, I wrote to you concerning the documents being withheld from your Subcommittee and enclosed a list of these documents with an explanation of the reasons that these documents are considered enforcement sensitive. One of these documents is described at number 38 of Exhibit A to my letter. However, for the reasons discussed below, I was directed by the Administrator to provide this document to the Subcommittee. The document is still important to our enforcement efforts at Stringfellow and should be kept confidential.

We are providing this document to you in the spirit of the Attorney General's statement to you in his letter of November 30, 1982, that the Executive Branch responsibility for law enforcement materials would not be used to shield a document which contains evidence of criminal or unethical conduct by Agency officials from proper review. Ms. Rita Lavelle, Assistant Administrator for Solid Waste and Emergency Response, indicated at her confirmation hearing on March 23, 1982, (Committee on Environment and Public Works, United States Senate, 97th Cong., 2d Sess., Serial No. 97-H41, pp. 38-39) that she would recuse herself from dealings involving her past employer, Aerojet-General Corp. or any of its subsidiaries.

I received a memorandum from her announcing her recusal dated March 22, 1982. The next memorandum from her concerning the Stringfellow site in particular was dated June 18, 1982, and announced her recusal from dealing with the Stringfellow site in particular. I am informed that one of the generators at the Stringfellow site may be Aerojet-General Corp. Accordingly, any dealings by Ms. Lavelle with that site may create the appearance of a conflict of interest even though Ms. Lavelle no longer has an employment, stock or pension interest in that company.

Ms. Lavelle's explanation of this matter is found in the attached statement. This statement addresses her conduct in this matter.

Also enclosed are other documents concerning the Stringfellow and Tar Creek sites. I was informed on December 12 that these documents were located in the personal files of Ms. Lavelle.

We request confidential treatment for one of the documents contained in the materials from Ms. Lavelle's files. The confidential document is the draft memorandum entitled: "Authorization to Proceed with Remedial Actions at the Stringfellow Site, Riverside County, California -- Action Memorandum," from William Hedeman, Jr. to Rita M. Lavelle, undated. This document should be kept confidential because the cost estimates contained therein are substantially less than what we are seeking in negotiations with potentially responsible parties for remedial action at the Stringfellow site.

Sincerely,

Robert M. Perry

Robert M. Perry
Associate Administrator
and General Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

STATEMENT OF CERTIFICATION

I, Rita Lavelle, Assistant Administrator for Solid Waste and Emergency Response certify the following facts:

1. On March 22, 1982, I agreed to recuse from participation in any EPA matter which specifically involves Aerojet-General or its subsidiaries.

2. On June 14, 1982, I received an in-depth briefing on the Stringfellow situation. (This is the material supplied as "confidential" to the subcommittee).

3. As part of a follow-up to the briefing, an enforcement briefing was scheduled for Thursday evening, June 17. At that time, for the first time, I was told that an Aerojet-General subsidiary was cited as one of the possible responsible parties. I immediately left the briefing and executed a recusal statement (dated June 18) which is attached.

4. Since June 18, 1982, I have not participated in any Agency action regarding the Stringfellow Hazardous Waste Site consistent with my recusal statement.

Date: 12/13/82

Rita M Lavelle
Rita Lavelle
Assistant Administrator for
Solid Waste and Emergency
Response

FACSIMILE TRANSMISSION RECORD

Sonia Crow, Regional Administrator
Region IX

Rita M. Lavelle
(will call you)

Washington D.C.
Region IX

382-4610

DATE 6-15-82
"Eyes Only"

PAGES 3 of 3

3 pgs to follow :-

EPA Form [illegible]

3: RA | DICK
cc: 1-1
RC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

38 6|16|8.

JUN 14 1982

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Issues: Stringfellow Site, Riverside County, CA

FROM: Lamar Miller, Acting Director by F. Bres
Office of Waste Programs Enforcement

TO: Rita M. Lavelle
Assistant Administrator

Purpose

The purpose of this memorandum is to discuss two issues raised by Region IX's request for Superfund allocations for the Stringfellow site, Riverside County, California. These issues are: 1) notice letters to generators; 2) the mechanism of reimbursement to the State. Recommedations are presented.

Background

The Stringfellow site consists of 22 acres in a canyon one mile northwest of Riverside, California in the Jurupa Mountains. The site received an estimated 32 million gallons of liquid wastes between August, 1956 and November, 1972 when its Class I disposal site permit was revoked by the county. In 1974, the owner/operator abandoned the facility and the Regional Water Quality Control Board took over control of the site. The State of California obtained title in December, 1980 as a result of a tax sale.

The Region IX office has compiled a list of some 200 generators who disposed of wastes at the site. In a February 16, 1982 memorandum, the Region requested that OLEC not send notice letters to responsible parties at the Stringfellow site because of ongoing "sensitive negotiations" with the State of California. OLEC complied with this request on a temporary basis.

As of June 10, 1982 an Action Memorandum for allocation of $4,000,000 and a state cooperative agreement are being drafted. A portion of the money is proposed as a State reimbursement for work performed over the last year, the rest for additional remedial planning and construction.

Neither OWPE, OERR nor OLEC have been able to determine from conversations with the region exactly how much money is to go to reimbursement and how much to new construction. The Draft Action Memorandum proposes a reimbursement of approximately $1 million and new construction of $3 million. The latest estimate from the Region is $3 million in reimbursement and perhaps $1-3 for new construction. The significance of this ratio is that it is related to EPA's ability to recover funds spent prior to notification of responsible parties.

ISSUE 1 : Should notice letters be sent to the owners, operators and generators at the Stringfellow site?

YES: • OWPE and OLEC feel strongly that notice letters must be sent in order to protect EPA's cost recovery options. It is our position that if EPA reimburses the State and/or funds additional remedial construction without first offering the former owners, operators and generators a chance to participate, then we may weaken our case for cost recovery. Notice letters are our way of informing responsible parties of our intentions and of opening the door to private party funded cleanup.

NO: • Region IX feels that EPA need not send notice letters in the case of already completed construction for which we are reimbursing the State because we can go directly to cost recovery action.

(The mechanism for getting responsible parties to begin negotiations short of litigation is unclear.)

• The generators in this case may raise the defense that they should not be held liable because the site was a state/county permitted site to which they were directed to deposit their wastes in accordance with applicable regulations.

(OWPE and OEC do not think that this defense will relieve generators of liability under CERCLA. Nationally, we have sent notice letters to generators at sites which were permitted and sit[illegible] which the State advised were available for disposal. We are negotiating settlements with these notified generators.)

RECOMMENDATION:

- Region IX should devise a strategy for sending notice letters to responsible parties, including generators, as soon as possible, based on currently available information. A strategy should be prepared for beginning negotiations with parties responding favorably.

The Region should then send notice letters. OWPE is prepared to provide full support for this effort including drafting and preparing notice letters.

ISSUE 2: Should Superfund monies be allocated to reimbursing the State through the Action Memorandum process currently being used for remedial response activities under CERCLA § 104?

YES: The Region feels that it has made a commitment to the State to reimburse these funds. The process being used to accomplish this is the regulatory grants deviation process which arguably can be used for this purpose.

NO:
- OWPE and OLEC question whether mechanisms used for §104 activities can be used to fund activities where remedial construction has already been accomplished. This mechanism avoids the pre-construction review, and public participation processes and doesn't provide for responsible parties to have been notified and offered a chance to participate in a nonemergency situation.
- OWPE and OLEC are concerned that the use of the §104 mechanism rather than the §112 provisions will jeopardize attempts at cost recovery. Defendants in a cost recovery action will argue that the reimbursement is either illegal or improper.

RECOMMENDATION:

- The current Draft Action Memorandum and State Cooperative Agreement be rewritten as two actions, one to address only reimbursement, one to address only prospective remedial construction and planning activities.
- Office of Legal and Enforcement Counsel should address the propriety/legality of State reimbursements through the §104 rather than the §112 mechanisms.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 14 1983

THE ADMINISTRATOR

Honorable Edward C. Schmults
Deputy Attorney General
U. S. Department of Justice
Washington, DC 20530

Dear Mr. Schmults:

A number of news reports over the past week have raised serious questions as to whether certain EPA officials have engaged in improper conduct in administering the program authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund program). In addition, on February 10, 1983, Stanley M. Brand, General Counsel to the Clerk of the U. S. House of Representatives, inquired into the use of paper shredders in the Superfund program. He is concerned that documents subpoenaed by the Subcommittee on Oversight and Investigations of the House Committee on Public Works and Transportation were being destroyed. A copy of Mr. Brand's letter and the Subcommittee's subpoena are enclosed.

It is my understanding that two paper shredders were placed in the Office of Solid Waste and Emergency Response (OSWER) on about January 6, 1983. Enclosed are statements by two OSWER managers on this matter. The subpoena was issued during the 97th Congress. From a legal standpoint, I understand that with the adjournment sine die of the 97th Congress on December 21, 1982, the Subcommittee's subpoena ceased to have any current effectiveness as far as imposing a continuing obligation to produce documents.

I do not believe, however, that this legal defense should be used to shield any conduct by Agency officials to obstruct a Congressional proceeding or investigation. The Agency through the Subcommittee's subpoena was on notice as to the types of documents in which the Subcommittee was interested. To be able to cooperate with the Subcommittee, we have an obligation to preserve those documents even though the Subcommittee has not reissued a subpoena. If any Agency official has destroyed any documents for the purpose of obstructing a Congressional proceeding or investigation, I ask that the Justice Department bring appropriate action.

In order to examine this matter fully, I request that the Justice Department immediately initiate an investigation into this matter.

Sincerely yours,

Anne M. Gorsuch

Enclosures

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Robert S. Prolman and/or Sante J. Esposito

You are hereby commanded to summon ANNE M. GORSUCH, Administrator, United States Environmental Protection Agency, 401 M Street, S. W., Washington, D. C. 20460

to be and appear before the Subcommittee on Investigations and Oversight of the Public Works and Transportation Committee of the House of Representatives of the United States, of which the Hon. Elliott H. Levitas is chairman, and to produce all books, records, correspondence, memorandums, papers, notes and documents drawn or received by the Administrator and/or her representatives since December 11, 1980 including duplicates and excepting shipping papers and other commercial or business documents, contractor and/or other technical documents, for those sites listed as national priorities pursuant to Section 105(B)(B) of P.L. 96-510, the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980,"

in their chamber in the city of Washington, on December 2, 1982

, at the hour of 10:00 a.m.

then and there to testify touching matters of inquiry committed to said Committee; and ~~he is~~ she not to depart without leave of said Committee.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 16th day of November, 19 82

James J. Howard
Chairman.

Attest:

EDMUND L. HENSHAW, JR., *Clerk.*

ORIGINAL

Subpena for ANNE M. GORSUCH

Administrator,

U.S. Environmental

Protection Agency

before the Committee on the

Served 1-22-82

R S

House of Representatives

U.S. GOVERNMENT PRINTING OFFICE [illegible]

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U.S. House of Representatives
Washington, D.C. 20515

February 10, 1983

Robert M. Perry, Esquire
Associate Administrator and
 General Counsel
U.S. Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Perry:

I am writing to you concerning disturbing information that the Subcommittee on Investigations and Oversight of the House Committee on Public Works and Transportation has received and verified that at least two automated shredders have been moved into the Office of Emergency Response and the Office of Hazardous Waste Enforcement within EPA's Superfund program offices at Waterside Mall since the December 16, 1982 citation of Administrator Gorsuch for congressional contempt for refusal to produce documents pursuant to subpoena from the Subcommittee. The Subcommittee is aware that this equipment was obtained from Automated Systems Inc., in Springfield Virginia and that they bear EPA property identification numbers 193800 and 193801, respectively.

The Subcommittee has determined that the shredders are accessible twenty-four (24) hours a day and are unsecured. Further, we have been told that they are being used in off hours, including weekends. Moreover, the shredders are being used in the absence of guidelines and no record is being maintained documenting what is being shredded, or by whom.

As you know, the Subcommittee has issued a subpoena for documents relating to Superfund enforcement and the House of Representatives has certified the failure of EPA to produce the documents to the United States Attorney for criminal prosecution under 2 U.S.C. §194.

We are concerned about the destruction of documents currently under subpoena by the House of Representatives and whether adequate precautions to prevent such destruction have been taken. As you no doubt are aware, any willful destruction of the documents subpoenaed by the House could constitute criminal offenses which carry severe sanctions. See, e.g., 18 U.S.C. §§1505. (Obstruction of proceedings before departments, agencies and committees.)

Our concern is heightened by the fact that one of these shredding devices is located in an office immediately adjacent to offices used by Rita M. Lavelle, who as you know, was the Agency's top official for carrying out the Superfund law.

As the EPA's chief legal officer, we urge you to take whatever steps are necessary to protect these vitally important documents and to prevent subpoenaed documents from being destroyed and or discarded by this equipment or by any other means. If you determine that these shredders have been used to destroy documents under the House's subpoena, please advise us immediately.

Sincerely,

Stanley M. Brand
Stanley M. Brand
General Counsel to the Clerk

cc: Hon. Thomas P. O'Neill, Jr.
 Speaker
 Hon. Elliott H. Levitas
 Hon. John D. Dingell
 Stanley Harris, Esquire

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 10 1983

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

Subject: Paper Shredder Use within OERR

From: William N. Hedeman, Jr., Director Bill Hedeman
Office of Emergency and Remedial Response

To: Michael A. Brown, Assistant Administrator

On January 6, 1983, the Hazardous Site Control Division (HSCD) obtained an electric paper shredder for disposal of obsolete confidential and proprietary documents. The shredder was available when an Agency procurement mix up resulted in two surplus shredders. HSCD had a limited use for a shredder and agreed on January 4 to requisition one of the units to help relieve the surplus.

The unit was initially located in Room S385C and later just outside that office in an unlocked secretarial bay. The unit was not kept in a locked area. During normal office hours, users of the unit could be observed by management and administrative staff, which tended to control its use. No controls were instituted for off-duty hours, and no records were kept on its use.

The primary custodian of the shredder was a senior Agency employee who is very familiar with proper custody of confidential documents and informally monitored use to reduce the likelihood that indiscriminate or improper use could occur.

Although records do not exist that describe the specific documents shredded, the use was essentially limited to obsolete forms and data sheets used in developing the National Priority List (NPL) and obsolete proprietary contract proposals. The NPL documents were considered confidential until the NPL was proposed in the Federal Register (December 30, 1983), at which time appropriate documents were placed in a public docket. Obsolete copies of the NPL documents were shredded in order to reduce the possibility that incorrect information would be misused. Contract proposals are considered business confidential and we believed that it was required to destroy the obsolete proposals.

The shredder was removed from OERR by security office personnel mid-afternoon today.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 11 1983

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

SUBJECT: Paper Shredder

FROM: Gene A. Lucero, ~~Director~~ Gene A. Lucero
Office of Waste Programs Enforcement

TO: Michael A. Brown, Acting Assistant Administrator
Office of Solid Waste and Emergency Response

This memo is written in response to your request for information about the acquisition and use of the paper shredder in OWPE.

Sometime in December 1982, our Administrative Officer was contacted by the Administrative Officer for the Hazardous Site Control Division in OERR and told that there were two paper shredders available in Surplus. It was our understanding from the OERR AO that some other office within EPA had procured paper shredders but somehow two extras had been ordered/delivered by mistake. EPA's procurement office had contacted OERR and asked them if they could take them off their hands.

At about the same time, OWPE staff were reviewing the contents of their files in order to comply with the Levitas subpoena and the directives from OLEC regarding enforcement sensitive documents. Complete file reviews made it apparent that there were many unnecessary documents and papers taking up scarce storage space in the office. Multiple copies of each succeeding draft of consent decrees issued months ago and multiple copies of documents prepared for meetings but never distributed were the types of papers and documents that could be discarded.

When the paper shredder was offered to us, we decided to accept it since it would be the most secure way of discarding unnecessary documents. In addition, it would be a more secure way of discarding duplicate copies of enforcement confidential or enforcement sensitive materials in the future. Past experience has shown that the Agency's trash removal process did not guarantee that documents would not be spilled in hall ways or found blowing around on the parking lot near the dumpster.

Tony Montrone, director of our policy and planning staff, gave verbal approval of the purchase. OERR prepared the procurement request, and we supplied them with the necessary accounting information. According to the copy of the Procurement Request provided us by OERR, the request was prepared on January 4, 1983 and the date required was Janaury 6, 1983. To the best of my knowledge, the shredder was delivered on Janaury 6, 1983 as requested.

The shredder was placed in an area accessible to all employees during normal working hours. The area is secured on nights and weekends. OWPE staff were told that they were to review their files and discard extraneous and duplicate materials. In addition, because of its location near the copying machine, bad xerox copies were put through the shredder.

Michael Kosakowski, Acting Chief, Compliance Branch and I specifically instructed OWPE staff not to shred or otherwise discard documents subject to congressional requests and subpoenas. OWPE employees, to the best of my knowledge, have observed this order.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 10 1983

THE ADMINISTRATOR

CONFIDENTIAL

Honorable Edward C. Schmults
Deputy Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Schmults:

A serious matter has just come to my attention. Chairman Scheuer, Subcommittee on Natural Resources, Agriculture Research and Environment, House Committee on Science and Technology, has requested a copy of Ms. Rita Lavelle's calendar. Ms. Lavelle's employment with this Agency was terminated on February 7, 1983. The calendar was last seen in the possession of another employee in early January who also left the Agency this week.

A thorough search has been made of both Ms. Lavelle and the other employee's offices. The calendar cannot be located. We are continuing to search, but because of the potential of a criminal violation, I am asking that you through the Federal Bureau of Investigation initiate an investigation.

Sincerely yours,

Anne M. Gorsuch

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CHIEF COUNSEL AND STAFF DIRECTOR

1-26-83 Picked up by request

U.S. House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, D.C. 20515

Advance copies
Gorsuch
Daniel
Lavelle
Perry
Medcalf
Gibbons
All individuals to be interviewed at Headquarters
Magnafsk to Region IX

January 25, 1983

The Honorable Anne M. Gorsuch
Administrator
Environmental Protection Agency
401 M Street, S. W.
Washington, D. C. 20460

Dear Ms. Gorsuch:

In correspondence dated September 17, 1982, and January 14, 1983, you were informed of the legislative and oversight interests of the Energy and Commerce Committee in performing case study reviews of the Environmental Protection Agency's administration of the Superfund statute at several hazardous waste sites. You were also notified that we are reviewing allegations that the distribution of Superfund money has been manipulated for political purposes, and we are investigating allegations of misconduct and unethical behavior by an agency official.

Our investigation has progressed to the point where it is necessary for the staff of the Subcommittee on Oversight and Investigations to interview agency employees who have knowledge of the agency's activities at these sites, starting with the Stringfellow Acid Pits, a California hazardous waste site. Interviews of agency personnel located both at EPA Headquarters and at Regional Offices will be necessary, and the Subcommittee staff will coordinate the interview schedule with EPA's Office of Congressional Liaison. I have instructed staff to make every effort to accommodate the schedules of the employees involved. In most instances, I would anticipate that the interviews will not be lengthy.

The following is an initial list of agency employees who will be scheduled for interviews relating to the Stringfellow site.

- Headquarters: Mr. Russell Wyer, Ms. Stephanie Del Re, Mr. Gene Lucero, Mr. Lamar Miller, Ms. Jan Wine, Ms. Debbie Dalton, Ms. Nancy Willis, Mr. William Hedeman, Mr. Edward Kurent, Mr. Frederick Stiehl, Ms. Heidi Hughes, Mr. Jerry Schwartz, Ms. V. Ann Strickland, Ms. Kathy Summerlee, Mr. Frank Biros, Mr. Colburn Cherney.

The Honorable Anne M. Gorsuch
January 25, 1983
Page 2

- Region IX: Ms. Sonia Crow, Mr. Robert Thompson, Mr. Robert Wyatt, Mr. Harlan Agnew, Mr. David Mowday, Mr. Harry Seraydarian, Mr. Laurel Chun, Mr. Keith Takata, Mr. Thomas Severino.

In the event it becomes necessary to conduct additional interviews, the names of those individuals will be provided to the Office of Congressional Liaison.

Due to the sensitive nature of this particular inquiry, it will be necessary for the interviews to be conducted separately and privately by Subcommittee staff. Further, with regard to Headquarters personnel, the Subcommittee requests that the interviews be conducted at the Rayburn House Office Building. These procedures are designed to insure that the complete candor and cooperation of agency employees in providing answers to questions and relevant information is not inhibited in any manner.

For the interviews of Mr. Robert Thompson, Ms. Kathy Summerlee, and Ms. Heidi Hughes, it is requested that they bring all their original notes of meetings, telephone conversations, or staff discussions occurring between May 1, 1982 and November 1, 1982, relating to the Stringfellow site. This is for the purpose of examination by the Subcommittee staff to assist them in the interview and in the fullest development of the facts.

This investigation has already been seriously delayed by our continuing inability to obtain all relevant documents identified in my letters of September 17, 1982, and January 14, 1983. I expect that the Subcommittee will move expeditiously in this matter, and I look forward to your cooperation.

Sincerely,

John D. Dingell
Chairman

TRANSCRIPT of Meeting at U.S. Environmental Protection Agency on Degree of Hazard Grant Proposal, April 8, 1982

Participants: Joseph Cannon
Rita Lavelle
Nornam Nosencheck
Jack McMillan
Jacqueline Rams

RITA : About the Degree of Hazard grant, --everything in the grant was done or is being done. I have a philosophical problem with concept; I don't believe in giving government dollars to any group; I am also upset with the position taken by your group in testimony; I'm agitated about your position on the authorization and decreased funding issues. How closely can we work together doing studies? It is an infeasible probability, with such a philosophical difference . . . you know, we play hard ball in California . . . I believe your group is worthwhile; States must take on the program; — How can we work together with such prejudices and biases?

NORM : Rita, let me explain to you about the funding issue, aid to States was given as an inducement by EPA in late 1978. The real question is — can States find resources to do the program? New York is not able to do it. Rita, when will the regulations be finished?

RITA : The land disposal regulations will be out in a couple of weeks, the financial package is ready to be signed; and incinerator regulations will be out soon.

NORM : What about permit applications?

RITA : Part B's are being revised.

NORM : States need staffing to implement programs; EPA's ORIA report led States to believe that a 75% level of assistance will be planned on. Now the requirements are greater, and funding support down.

JOE : True, the proposed level of funding is down, and we can't deal with this question.

RITA : Norm, if you state it that way in testimony . . . We need help with permitting; we want to come up with 6-8 year permitting strategy, but we always get opposition from you; for example, when we proposed the annual survey instead of the report -- we got opposition from the States.

NORM : We need an annual report for planning and enforcement; the States thought you made a mistake with lifting ban on liquids in landfills.

JACK : Rita, EPA needs arrangement with the States to avoid such problems of understanding.

RITA : We can't process these reports at headquarters, we don't have resources here.

JACK : Rita, the entire program is based around that information in the annual report.

RITA : We are cognizant of the dollars needed to implement the requirements; however, they (Gorsuch/EPA) are asking for less resources and we can't afford for States to stab us in the foot.

NORM : For States to assume the program, States must have the responsibility and that is the problem. We need dollars. I will be glad to review with you Rita, how the States calculate these needed dollars. Rita, the EPA program staff is not consulting with States. We are offering EPA the opportunity to get State-to-State consistency. ASTSWMO could act as a sounding board: For example, ASTSWMO could have forecasted State response to the ban on liquids-in-landfills, and forecasted State response to the annual reporting requirement.

RITA : Norm, no State bans total liquids in landfills.

NORM : Rita, we're talking about the 25% limit. If EPA had discussed this issue with ASTSWMO, we would have gotten back to you very quickly with a readout of the States' positions.

RITA : We need State input. But everyplace I go, there's Norm . . . and I don't want to find these letters from Moynihan's office . . . with your name on the bottom. We have to work closely and have a commitment. I don't want you (Norm) to talk to Senators until we agree beforehand. . .

JACK : Rita, we are looking at 50 States, not one.

RITA : I just want Norm and I to get along . . . My hearing was almost held up because of that letter . . . and I don't know where he got that letter . . .

NORM : I know where he got that letter -- from me.

JOE : . . . what we'd (EPA) like is communication . . .

NORM : We are . offering a two-way street, to bring States in as full partners with EPA. You know it's terrible, as a private citizen to see lack of care by people in Washington.

JOE : We want to avoid regulations that don't work — How can EPA give to States what they need and still meet EPA's needs?

JACK : Rita, do you have a complete data base?

RITA : I have one; However, there are several ideas I have: States need to generate revenue sources -- you know about the preemption case in New Jersey — we could use an in-depth study of RCRA/Superfund activities in the States. How will States fund these activities with the anticipation that federal dollars are being cut out.

JACK : This would be speculative, depending on State legislatures especially with all the regulations not finished.

NORM : Rita, what about doing an assessment of what it will cost the States to run the program? The land disposal regulations are a samll part of the costs.

JOE : Given the fact that regulatory framework is complete for RCRA and Superfund . . .

JACKI : What is the Superfund regulatory document?

RITA : The NCP is the regulatory document.

JOE : How can EPA be of use to the States and States to EPA?

JACK : We will identify those areas for you.

RITA : It could be on a study by study basis.

JACK : Rita, when States get calls from the public who are filing applications for T/S/D's, they need a data base to do it, there needs to be a technical data behind the program. We need scientific data. I don't believe you have all the technical data necessary for the program.

RITA : We need to get new technologies out there.

NORM : . . . I think there are mistakes in the WET matrix.

JOE : One of our concerns is monitoring. (To Rita), Can we implement the groundwater protection strategy as far as monitoring is concerned?

RITA : Crampton just stopped me on that (said to Cannon).

JACK : The application of groundwater monitoring is an important issue . . .

JOE : Let me make a suggestion; I'm shifting the ball to Rita, let's set up a working group headed by Skinner's program and OPRM (Sam Napolitano, Dave Paisano) staff and sit down together.

RITA : We need a nationwide permitting strategy.

JACK : You need a permitting team, Rita.

RITA : We are working with regional offices on this.

JOE : About the working group idea -- They will identify research needs, and the States will be a part of the process in a physical way. FACA does not prohibit EPA's involvement with States, I don't think so . . .the group can identify specific projects that are fundable, and have the reality of being involved in the process.

JOE : I can't catch up with regulations . . .

RITA : The group will come up with specific tasks.

JACK : Back to degree of hazard -- do you feel that the background information is substantial? You're not interested in expanding it for decision-making? Is the data base complete? Do you have all the scientific data to use to determine levels of management needed for wastes?

RITA : The data base is still being gathered and States can tie into terminals in each of the regional offices. A nice carrott -- a buy into the permit office.

NORM : (To Rita) Are you comfortable with WET matrix? Do you think States will be comfortable enough to sign off on WET matrix? There are concerns about this with the States. I think you will see an undercurrent of national concerns on the WET matrix.

JOE : (To Norm and Jack) How angry would you be if we asked for another few weeks to delay ASTSWMO's grant?

RITA : The week of the 19th for the group meeting, have Skinner chair it.

JACK : - As far as a firm commitment Joe, we must come up with some commitments for the Association.

RITA : You (ASTSWMO) come back with costs.

JACK : ASTSWMO is surviving on stretched resources based on Joe Cannon's commitment. That week we will have a commitment to work together.

NORM : Rita, are you familiar with the Subtitle D portion of RCRA? Is their any talk about Subtitle D coming back into funding?

RITA : If we buy into local control . . . the federal government can bail out all of Subtitle D.

NORM : The concern is that you pulled out too fast.

RITA : We are looking for deeper solutions than just dollars.

NORM : About the Open Dump Inventory, many States are having problems with doing it. Open dumps will become inactive hazardous waste dumps, especially under the samll generator exemption . . . Hazardous waste will go into municipal solid waste facilities; not doing the Open Dump Inventories will create problems.

JOE : Do you think that small generator rule is not such a good idea?

JACK : The reason that EPA jumped from 100 kg to 1000 kg was because of the scope of coverage to manage the system at the State level. Once they (EPA) got program going, the level was to be reduced. We must eliminate this now -- get this idea out of the system. It was not the intention of original requirement. Originally, it would have brought too many characters into the program, but when hundreds of these are disposing their wastes into municipal solid waste facilities, you have a real problem. The end result the same; bring these people into the system and get rid of requirement, or do it State by State. Then it needs to be expanded to all States. Small generators do as much trouble as large generators.

(Cannon leaves about now)

NORM : Rita, about Section 3012, RCRA. We have concerns that the interim priority list are not the worst sites. States are getting no support on that part of the program.

RITA : Do you want the federal government to take it over when States are not doing it?

NORM : We have no dollars, even though the monies have been authorized. The law says that feds will do the job in the States' absence. Take a hard look at that section, Rita. At the HUD workshop (for the Appropriations Committee), EPA themselves said they need the data. We (States/EPA) share a common concern: to clean up past problems, and to clean up future problems with a more effective management system. There is serious concern in the State of California with hazardous waste program, in your State, Rita, and in the State of Texas about giving back the program if no dollars are available.

RITA : That is the easy solution. We need more creative solutions. Superfund is the most ass-backwards law, hurting those people who would come up with technologies needed. What about a tax on dumps? Anyone who uses dumps has to pay.

JACK : Don't sacrifice the program for this. States must discuss in their State legislatures about doing this; it may be two years; if you say it must be nationwide — that will give up on the program.

RITA : Funding will last 5-6 years and that is it; the handwriting is on the walls about Subtitle D — and now it is coming about Subtitle C.

JACK : State Directors can not tell their legislature what to do/not to do; we can't sacrifice the program by telling them what needs to be done. There needs to be a communication vehicle to prevent this.

RITA : There have to be solutions and the solution is not federal funding. It can be private dollars, like a generator. We want some initiatives, some innovative thinking. Maybe you should go after the State legislatures to get those dollars; Don't let them tax the feedstocks. You say landfills are bad, what will substitute for landfills?

NORM : SCA has incineration.

RITA : You cannot close all your landfills right now, Norm.

NORM : I have no intention of doing that, but to expand, the owner must get a permit; We give them a schedule of what New York would like and tie this with a corporation commitment to move into other areas. It's part of an integrated hazardous waste management facility; We will not give a permit for a new landfill.

RITA : If you taxed the users of facilities, then for industrial waste, there would greater incentive for innovative treatment technologies, and that's the way we should be moving, or waste stream reduction. Industry has the technology and can get solutions.

JACK : But with the level of management on landfills, there will never be a change.

RITA : Call the week of the 19th, and we will make a commitment. Call me before you call the Senate, Ambassador Nosenchuck, if we are going to work together. . .

NORM : About the Love Canal health effects study, I need to know when it will be out so that I can schedule a meeting.

RITA : I'll give you a call . . . I don't want you calling the Senate . . . This is only the first inning of the ballgame . . . I want Skinner to head up the task group with regional people, he's great.

JACK : I will talk to Skinner and we'll do as much before the meeting as we can. Are you open for consideration for us to look at your data base and expand this?

RITA : OK, you can look at it, and I'll put someone from WET matrix team on the group.

JACK : We've been kept in the dark about WET matrix and the data.

NORM : We want more than a briefing Rita, a working partnership. There are different levels of toxicity, there has to be regional cooperation.

JACK : Rita, have you gone to the waste management facility in Alabama?

(Rita Lavelle leaves)

JACK : We can work our way into a degree of hazard; It will be 3-4 years before the WET matrix is fully operational and if we work with them, we can get a program we would like to have.

(Cannon returns, Rita does not return)

JOE : I am committed to get something done; There is a problem with solid waste and RCRA implementation; the Solid waste regulations are bad.

NORM : The problem is that the States are not consulted.

JOE : The regulations do not get to OPRM fast enough. We had a problem with the financial responsibility package. OPRM was by-passed on liquids in landfills. I have written a memo criticizing the proposal; I have a strong interest and am a strong advocate that OPRM is tied in except that the action has shifted since an AA has been appointed -- and it is not my job now. But, I'm trying to do it by having OPRM people on group. I like a product. I am a laid-back California type . . . I don't play hardball, although I am getting a little cynical.

JACK : We won't always agree.

JOE : I would rather have a NYT* person call me up before he would write an article, rather than after it has been written. We must establish a point of communication; You shouldn't have any hesitation to call me -- even though I haven't been showing that I have been producing for you.

JOE : But, resistance is there.

NORM : Joe, the same people that are creating problems are still there. The WET matrix will be rejected by the States and blown out of the water. Where will bureaucracy be? Where will the career people be? Six years of work down the drain?

joe ; We have a lot of people in the agency that agree with you Norm.

NORM : This whole contracting business with WET matrix should be investigated.

JOE : What is WET matrix?

JACK : You need to be in on it, now -- don't wait until Red Border Review.

JOE : What is wrong with it?

JACK : Scientifically, there is something wrong with the approach -- look at scientific data that backs it, and before it is implemented by the States.

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*New York Times